

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
Computer III Further Remand Proceedings)	CC Docket No. 95-20
Bell Operating Company Provision of)	
Enhanced Services)	
)	
1998 Biennial Regulatory Review -)	CC Docket No. 98-10
Review of Computer III ONA)	
Safeguards and Requirements)	

**REPLY COMMENTS OF THE
TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION**

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I. INTRODUCTION AND SUMMARY

About TISPA. The Texas Internet Providers Association (“TISPA”) is a state wide association of Internet Service Providers (“ISPs”); any entity that provides Internet access or is involved in the business of the Internet in some fashion may join as a full or associate member. More information about TISPA may be found at the association web site, www.tispa.org.

Summary. ISPs are not carriers; they are customers of carriers. As a general rule, ISPs *per se* do not provide telecommunications service: they buy them as do their users. Both ISPs and their customers are therefore wholly dependent on carriers, and especially incumbent local exchange carriers, to connect to the Internet. This is so for basic analog POTS lines, and higher speed digital network access services such as ISDN and DSL.

When any user subscribes to telecommunications service, an ILEC, such as one of SBC’s ILEC subsidiaries is usually involved at some point.¹ ISPs cannot avoid, at least for the foreseeable future, being dependent on SBC or one of its subsidiaries, at least in part.² SBC will provide service

¹ TISPA will focus on SBC and SWBT/SBCIS/ASI in these Reply Comments. However, the experience of members that interact with other RBOCs and ILECs is that while SBC is a major offender, it is by no means the only one.

² CLECs provide service in large part by obtaining unbundled loops from the ILEC. Wireless service may provide an option in the future, but it is not yet feasible on a broad scale for the mass market. Most cable companies do not provide open access to ISPs. There is no practical alternative.

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to the retail customer, the ISP or both; SBC will provide a UNE to a CLEC that is used to provide retail service to the retail customer, the ISP or both. Either way, SBC can quite literally bankrupt an ISP in a matter of days in any number of ways.

SBC can also slowly strangle an ISP by refusing to provide additional lines to support growth, by providing low quality service or by imposing inefficient costs through interesting and novel tariff limitations or interpretations that artificially increase costs. SWBT often blames the ISP for the perceived low quality service and then attempts to sell the end user SBC's own Internet product, which somehow seems to rarely face the same sort of problems that ISPs encounter every day.³

Texas ISPs are more than ready to meet SBC's ISP in the enhanced service marketplace, if the rules are obeyed and the holding company's actions are fair to all concerned. SBC appears, however, to have embarked on a strategic mission to exterminate competitive ISPs through its continued control of the local loop. SBC has clearly demonstrated its willingness, ability and desire to manipulate technology, tariffs and regulatory rules to favor its own competitive enterprises to the detriment of independent ISPs. This is the case regardless of whether the ISP is SWBT's customer, purchases service from SBC's Advanced Services Affiliate, or is served by a CLEC. It is true for POTS, ISDN and DSL.

SBC and its affiliates in Texas are strategically acting in concert in an anticompetitive fashion to maintain dominance in local service and are trying obtain dominance in enhanced services. The only

³ See, Attachment 1.

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protection that small, local and regional ISPs have as competitors of SBC's integrated enhanced service operations is this Commission's rules. They must not be changed, and they must be enforced.

The stories about SBC's transgressions are many; yet documentation is, not surprisingly, difficult. SBC has instructed its employees to commit very little, if anything, to writing. Consequently, ISPs rarely receive confirmation of SBC's actions. As a result, ISPs can in large part offer only their own recollection of the events. Attached to these comments are recitations by some Texas ISPs of the many problems they have faced. SBC may be able to explain away some of them, or rationalize others. TISPA requests, however, that the FCC consider these common themes confronted by non-affiliated ISPs and their customers:⁴

- Low quality service, especially service interruptions and outages;
- Denial of service to ISPs or their customers;
- Tariff gamesmanship to limit speed or geographic scope of network access;
- Discriminatory treatment that favors SBC's Internet operations in terms of network access.
- Use of SWBT employees to steer end users away from non-affiliated ISPs and toward SBC's Internet operations by blaming the ISP and promising (and delivering) higher quality network access services if the customer switches to SBC's Internet service;
- SBC marketing its enhanced services to ISP customers using information SWBT obtains from non-affiliated ISPs.

The FCC must continue the current rules, and it must vigilantly police and enforce those rules through meaningful penalties. Failure to require SBC to constrain its natural inclination to drive perceived competitors out of business by abusing its continued bottleneck control will result in the end of the independent ISPs in SBC's territory.

⁴ We note that ISPs in other SBC states raise similar complaints.

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At about this time last year, TISPA was engaged in a pitched battle with SBC over access to SBC's network. TISPA claimed extensive violations of both law and FCC rules. The matter ultimately ended as a result of a settlement agreement.⁵ Because of the settlement terms, TISPA does not seek relief related to any SBC "bad acts" TISPA brought to the FCC's attention prior the agreement. TISPA, however, can and does retain the right under the Agreement §§ 3.6, 3.10 and 3.11 to seek relief as it pertains to OSS, LATA-wide calling, local calling scope for ISDN, and seamless transfer when a customer changes ISPs. TISPA also may complain about SBC's current DSL terms, which have been imposed unilaterally on ISPs.⁶ Interestingly, most of the substantive requirements in the settlement merely mirrored existing *Computer III* obligations. SBC's failure to implement the settlement as it relates to the issues covered by §§ 3.6, 3.10 and 3.11 therefore also constitute violations of the FCC's rules. TISPA requests the Commission to consider these issues as it contemplates whether to further liberate SBC and allow it to totally destroy the competition.

II. RESPONSES TO COMMENTS

A. Background to *CI III*.

⁵ The Settlement Agreement is reprinted in Attachment 2.

⁶ If the FCC thought that its decisions would lead to meaningful negotiations over pricing and terms for DSL when the RBOC advanced services affiliate was involved, it was sadly mistaken. Neither individual ISPs nor state associations have been able to materially change any of the onerous terms SBC has put in place. TISPA addresses SBC's current DSL program below.

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The *Computer Inquiry* series was started in 1968 by the Commission to determine whether data processing should be regulated under Title II of the Act. The Commission correctly decided that providers in the then-nascent computer and data processing market should not be treated as common carriers. The Commission also recognized it needed to take specific steps to prevent dominant carriers from using their control over telecommunications facilities – upon which enhanced services “ride” – to dominate the market for enhanced services.⁷ As the Commission has stated:

The Commission has long sought to maintain appropriate safeguards for the provision by the BOCs of enhanced services. Since its *Computer I* proceeding, the Commission has adopted a variety of regulatory tools to prevent improper cost allocation and access discrimination against ESPs in the provision of enhanced services, both by the BOCs, and, before divestiture, by their predecessor in interest, AT&T. In the *Computer II* proceeding, the Commission required the then-integrated Bell System to establish structurally separate affiliates for the provision of enhanced services in order to address the concern over AT&T’s incentive and ability to engage in anticompetitive activity. Following the divestiture of AT&T in 1984, the Commission extended the structural separation requirements of

⁷ Oxman, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31 (July 1999), available at http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp31.pdf. This document correctly observes that the decisions of the FCC to not regulate enhanced services, and to require open access to the public telecommunications network had an incalculable impact on the growth of enhanced services in general and the Internet in particular.

Computer II to the BOCs. In *Computer III*, after reexamining the telecommunications marketplace and the effects of structural separation during the six years since *Computer II*, the Commission determined that the costs of structural separation outweighed the benefits, and that nonstructural safeguards could protect competitive ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies associated with structural separation.⁸

(Emphasis added)

⁸ Report and Order, *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, FCC 99-36 CC Docket No. 95-20, ¶ 7 (Rel. March 10, 1999) [*“CI III Remand Order”*] (emphasis added, footnotes omitted). The Commission refers to providers in the unregulated information market both as “enhanced service providers” (“ESPs”) and as “information service providers” (“ISPs”). Internet service providers are a subset of the class of information service providers. These Reply Comments, however, will use “ESP” when referring to the entire class of enhanced or information service providers, including Internet service providers and “ISP” when referring to only Internet service providers.

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Dominant carriers can shift costs from competitive enterprises to monopoly endeavors. They can discriminate against competitors and in favor of their own competitive operations. The FCC has tightened or changed some of the nuts and bolts on the particular rules over the years, but the basic concerns remain the same. Even though local competition is now growing and may, in time, act as an effective constraint on the RBOCs' ability to sustain cross-subsidization and discriminatory treatment of ESPs, the Commission recently found (and with good reason) that it still cannot totally rely on market forces.⁹

⁹ "We observed in the *Further Notice* that the BOCs remain the dominant providers of local exchange and exchange access services in their in-region states, and thus continue to have the ability to engage in anticompetitive behavior against competitive ISPs. We noted that the movement toward local exchange and exchange access competition should, over time, decrease and eventually eliminate the need for regulation of the BOCs to ensure that they do not discriminate against competitive ISPs in providing access to their basic service offerings. The Commission also acknowledged that Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies." *Id.*, ¶ 9 (footnotes omitted).

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The FCC tried to prevent cross-subsidization and discrimination by adopting the so-called Open Network Architecture/Comparatively Efficient Interconnection (“ONA/CEI”) regime. The goal of ONA was to develop a wide range of relatively cost-based and unbundled interstate tariffed offerings for elements of basic services¹⁰ that ESPs could purchase in order to interconnect with the public network and thereby offer their services, which by definition are provided “using telecommunications.”¹¹ ESPs may also purchase from state and local tariffs. BOC ESPs must obtain their telecommunications services from federal or state tariffs on the same terms and conditions as independent ESPs. ONA gives competing ISPs the ability to “pick and choose” network service elements, which are not necessarily used by the BOC in providing its own information services.¹² ONA is the overall design of a carrier's basic network services. Users of the basic network, including

¹⁰ The definition of “basic service” is “a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information.” *See, Amendment of Section 64.702 of the Commission’s Rules and Regulations*, 77 F.C.C.2nd 384 at 420 (1980) [*Computer II Order*], *reconsideration*, 84 F.C.C.2d 50 (1981) [*Computer II Reconsideration Order*], *further reconsideration* 88 F.C.C.2nd 512 (1981) [*Computer II Further Reconsideration Order*], *aff’d sub nom Computer and Communications Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) *cert. denied*, 461 U.S. 938 (1983), *aff’d on second further reconsideration*, 56 Rad.Reg.2d (P&F) 301 (1984). Basic service is roughly synonymous with “telecommunications service” as it is defined in 47 U.S.C. § 153(46). An “enhanced service” “combine[s] basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.” 47 C.F.R. 62.702(c). The Commission has noted that “enhanced service” has the same meaning as “information service” under § 153(20) of the Act. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further NPRM, 11 F.C.C.R. 21,905, 13 F.C.C.R. 11,230, 11 F.C.C.Rcd. 11,230, 5 Communications Reg. (P&F) 696 ¶ 102 (Dec. 1996).

¹¹ The FCC’s ONA rules were vacated by the 9th Circuit Court of Appeals. *California v. FCC*, 39 F.3rd 919 (9th Cir. 1994) (“*California III*”) *cert. denied* 115 S.Ct. 1427 (1995). The FCC, however, has required all BOCs that had approved ONA plans to continue complying with those plans. *CI III Remand Order* at ¶ 16.

¹² *Bell Operating Companies’ Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1724, 1725-26, ¶¶ 5, 11 (1995) [*Interim Waiver Order*].

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the information services operations of the carrier and its competitors, must interconnect to specific basic network functions and interfaces on an unbundled and “equal access” basis. Unbundling under ONA emphasizes the unbundling of basic services, not the substitution of underlying facilities in a carrier's network. Unbundling under § 251 of the Act, in contrast, includes physical network facilities together with the features, functions, and capabilities associated with those facilities.^{13, 14}

¹³ See Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 1019, ¶ 113 (1986) (“Phase I Order”); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd. 1, 41, ¶ 69 (1990); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15808, ¶ 258 (1996) (“Local Competition Order”), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997); *vacated in part on reh'g, Iowa Utilities Bd. v. FCC*, 120 F.3d 753, *further vacated in part sub nom. California Public Utilities Comm'n v. FCC*, 124 F.3d 934, *writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively, “*Iowa Utils. Bd.*”), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

¹⁴ TISPA supports granting ESPs the right to obtain collocation and unbundled facilities in a manner analogous to the rights carriers have under §§ 251 and 252 of the Act. Other parties have sufficiently addressed this issue.

CEI ensures that the BOC “offer[s] to competitive ESPs, on a non-discriminatory basis, all the underlying basic services that the BOC uses to provide its own enhanced service offering.”¹⁵ Each BOC that plans to offer enhanced services on an integrated basis must develop and post on its main web site a plan demonstrating that it meets the CEI “rules.”

B. Overview of CEI Requirements.

There are nine required parameters to a CEI plan:

- *Interface Functionality.* The BOC must “make available standardized hardware and software interfaces that are able to support transmission, switching, and signaling functions identical to those utilized in the enhanced service provided by the carrier.”¹⁶ This provision ensures that a competitive ISP will know what interfaces it must use to interconnect with the BOC’s network.
- *Unbundling of Basic Services.* The BOC must unbundle, and associate with a specific rate in the tariff, the basic services and basic service functions that underlie the carrier’s enhanced service offering.¹⁷ This provision ensures that a competitive ISP can purchase the underlying telecommunications services on which it bases its enhanced services. For example, an ISP might purchase tariffed transport services for its voicemail service.

¹⁵ *CI III Remand Order* ¶ 8.

¹⁶ *Phase I Order* at 1039 ¶ 157 (1986).

¹⁷ *Id.* at 1040, ¶ 158.

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- *Resale.* The BOC's "enhanced service operations [must] take the basic services used in its enhanced services offerings at their unbundled tariffed rates as a means of preventing improper cost-shifting to regulated operations and anticompetitive pricing in unregulated markets."¹⁸ This provision ensures that both BOC and non-BOC ISPs pay the same amount for the underlying telecommunications services obtained from the BOC.
- *Technical Characteristics.* The BOC must provide basic services with technical characteristics that are equal to the technical characteristics the carrier uses for its own enhanced services.¹⁹ This provision ensures that a competitive ISP can base its enhanced offering on telecommunications services that are of equal quality to those which the BOC's customers receive.
- *Installation, Maintenance, and Repair.* The BOC must provide the same time periods for installation, maintenance, and repair of the basic services and facilities included in a CEI offering as those the carrier provides to its own enhanced service operations.²⁰ This provision ensures that a competitive ISP can offer its customers support services of equal quality to those which the BOC's customers receive.
- *End User Access.* The BOC must provide to all end users the same abbreviated dialing and signaling capabilities that are needed to activate or obtain access to enhanced services that use the carrier's facilities, and provides to end users equal opportunities to obtain access to basic facilities through derived channels, whether they use the enhanced service offerings of the carrier or of a competitive provider.²¹ This provision ensures that a competitive ISP's customers will have the same access as the BOC's customers to special network functions offered in conjunction with information services.

¹⁸ *Id.* at 1040, ¶ 159.

¹⁹ *Id.* at 1040, ¶ 160.

²⁰ *Id.* at 1041, ¶ 161.

²¹ *Id.* at 1041, ¶ 162.

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- *CEI Availability.* The BOC must make its CEI offering available and fully operational on the date that it offers its corresponding enhanced service to the public, and provide a reasonable period of time when prospective users of the CEI offering can use the CEI facilities and services for purposes of testing their enhanced service offerings.²² This provision ensures that a non-BOC ISP is not put at a competitive disadvantage by a BOC initiating a service before the BOC makes interconnection with the BOC's network available to competitive ISPs, so that they are able to initiate a comparable service.

²² *Id.* at 1041, ¶ 163.

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- *Minimization of Transport Costs.* The BOC must provide competitors with interconnection facilities that minimize transport costs.²³ This provision ensures that BOCs can not require competitive ISPs to purchase unnecessarily expensive methods of interconnection with the BOC's network.

- *Availability to All Interested ISPs.* The BOC is prohibited from restricting the availability of the CEI offering to any particular class of customer or enhanced service competitor.²⁴

This provision ensures that BOCs do not engage in anticompetitive teaming with one competitive ISP and against others.²⁵

BOC CEI plans must describe how the underlying basic telecommunications services the BOC uses to provide its own information services are to be made available to competing ISPs. SBC has Internet operations, and SWBT has made a CEI posting for "Internet Access Services." *See*, <http://www.sbc.com/PublicAffairs/PublicPolicy/CEIplans/NetAccCEI.doc>. SWBT asserts that it "complies with each of the Commission's CEI and other ONA nonstructural safeguards and has the right to offer and provide Internet Access on an integrated basis." SWBT CEI Plan, p. iii; *see also*, *id* at 2, 14.

²³ *Id.* at 1042, ¶ 164.

²⁴ *Id.* at 1042, ¶ 165.

²⁵ The foregoing quotations and footnotes were taken verbatim from *CI III Order* ¶ 13.

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The Commission and courts recognize that the rules will not, by themselves, ensure a competitive marketplace; if they are to have any effect, they must be vigorously enforced, and the FCC must rely on ESPs to bring alleged violations to the Commission's attention.²⁶ The Commission has promised prompt enforcement when violations are brought to its attention.

C. Application of Facts to Requirements.

SBC and its subsidiaries such as Southwestern Bell Telephone Company ("SWBT"), SBC Advanced Solutions, Inc. ("ASI"), or integrated operations like Southwestern Bell Corporation Internet Services ("SBCIS") have each committed significant and widespread violations of the *Computer Inquiry* rules. SBC is not abiding by the promises made in its CEI plan. SBC routinely discriminates and engages in blatant anti-competitive practices against unaffiliated ESPs and especially ISPs. These Reply Comments will analyze the rules and decisions of the Commission and relate the factual allegations made by TISPA to specific rules or considerations relevant to the concerns stated by the Commission. The analysis will initially address the nine required parameters, then conclude with general conclusions regarding policy and enforcement.

1.
 - *Interface Functionality.*
 - *Unbundling of Basic Services.*
 - *Resale.*

²⁶ *Id.*, ¶ 15; *See also*, Further Notice of Proposed Rulemaking, *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, FCC 98-8, CC Docket No. 95-20, ¶ 36 (Rel. Jan. 30, 1998) [*"CI III Remand Further Notice"*].

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VPOP. SBC²⁷ offers a product called Virtual Point of Presence - Dial Access Service.²⁸ The service allows the service user to collect dial-up calls from throughout a selected metropolitan area or LATA and have them routed to a common group of SBC managed modems. The traffic is then converted into frame relay or ATM and routed to the service user at a single location. This is a bundled product: in order to obtain the ability to collect calls throughout the LATA and have the traffic routed to a single point of presence, one must purchase SBC's managed modem service and either frame relay or ATM service. The "PSTN portion" cannot be purchased separately.²⁹ It is noteworthy that the traffic is not always converted into packets at the originating end office; quite often the calls are circuit switched to the local tandem or to the nearest central office that has a network access server, at which point the traffic is converted and routed over SBC's frame or ATM network.

²⁷ SWBT originally offered the service, but ASI apparently now is the provider. SWBT filed tariff amendments on March 6, 2000 (Transmittal 2818) removing the service from FCC 73. A search for ASI tariffs was unsuccessful. Despite the claim on SBC's web site that VPOP is no longer available (<http://www.sbc.com/ISP/0,2951,10,00.html> [visited April 26, 2001]) SWBT is still offering the service to ISPs. See, Attachment 3, comprising a offer to Internet Texoma and a statement by STIC.Net; STIC.Net VPOP non-metro city map at <http://www.bulverde.com/vpop.html>. Note that the March 20, 2001 offer to Internet Texoma came from SWBT, not ASI, and STIC.Net's contract for VPOP is with SWBT, not ASI. Note also that while the offer to Internet Texoma claims VPOP is "metro only, the service provided to STIC.Net is for non-metro areas.

²⁸ On information and belief, TISPA asserts that SBCIS obtains VPOP-DAS service, even though this disclosure is not made in SBC's CEI plan. For this reason, the underlying basic services must be unbundled.

²⁹ SBC's VPOP product uses the same sort of "Virtual Central Office Codes" or "Virtual NXXs" the Commission appears to condemn in ¶ 115 of the recent NPRM in Docket No. 01-92 *In the Matter of Developing a Unified Intercarrier Compensation Regime* (Rel. April 27, 2001).

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VPOP-DAS can support 56Kbps analog calls and up to 128Kbps ISDN traffic. Therefore, the link between the PSTN and each network access server is likely to be ISDN-PRI.³⁰ There is no legal or technical reason why an ESP cannot be allowed to obtain only the metro or LATA-wide dial-up capability without having to subscribe to the separate, competitive, managed modem and cell transport services. SWBT, however, has to date failed and refused to develop a tariff offering that unbundles the PSTN portion (*i.e.*, the basic service) from the modem management and cell relay portions.³¹ This appears to be a violation of the CEI unbundling and tariff rules.

³⁰ The interface functionality issue is that ESPs do not know what interface, if any, is available to connect to the “PSTN side” of the bundled VPOP product. There is an interface, probably ISDN PRI, but SBC has not published that interface, nor can ESPs use it without also purchasing the entire bundled VPOP and frame relay/ATM service.

³¹ Frame relay and ATM are both telecommunications services (and therefore “basic” in *Computer Inquiry* parlance), but they are separate services from standard dial-up access using the PSTN. Modem management is likely not a basic service.

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The “resale” rule requires SBC’s enhanced operations to purchase basic services pursuant to tariff. As noted, however, there do not appear to be any ASI tariffs, and SWBT has withdrawn its tariffs related to “advanced services.” The Commission has repeatedly held that advanced services are still telecommunications services³² and although these are “advanced services” they are still “basic” under the CI III analysis. The rule requires tariffs, and there are none. The fact that ASI is for the most part treated like a CLEC is not important. SBCIS is part of SWBT, and SBC cannot be allowed to avoid CEI rules designed to avoid discrimination by forming an advanced services affiliate from which SBCIS (SWBT) purchases telecommunications services on nonpublished and potentially favorable terms.³³ SWBT/SBCIS is violating the CEI resale rule.

³² See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 at 35-36 (1998) (Advanced Services Memorandum Opinion and Order); Order on Remand, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, FCC 99-413, ¶ 9 (Rel. Dec. 23, 1999) (Advanced Services Remand Order).

³³ Permissive detariffing is expressly limited to interstate access, not all services. The FCC has held that DSL can be either exchange access service or exchange telephone service under the Act, and can be either

interstate or intrastate depending on how it is used. *Advanced Services Remand Order*, ¶¶ 15-45. The Commission changed course last week and apparently now believes that services used to access the Internet are “information access.” It is unclear whether “information access” must be tariffed by RBOC advanced services affiliates. Some of these products are used for purely intrastate applications. Permissive detariffing should not authorize ASI to offer secret and undisclosed terms for the services in issue since they are used for more than interstate access, and allowing detariffing in this instance would violate the CEI rule requiring integrated ILEC enhanced operations to purchase telecommunications services only through tariffs. This is especially the case when SWBT is actually performing most functions for ASI. SBCIS is integrated with SWBT, and obtains service from ASI, which operates through SWBT. SBCIS is negotiating with and buying from itself.

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DSL. SBCIS offers DSL-based Internet service³⁴ at \$49.95. A non-affiliated ISP, however, pays up to \$43 per customer per month to SWBT or ASI³⁵ for the DSL loop, the DSLAM port, use of the ATM cloud and a “pipe” to the ATM cloud.³⁶ The ISP must still incur the cost of providing Internet service to ISP patrons, and hopefully make some margin. This, on its face, is a classic “price squeeze” – where a retailer pays its upstream provider and competitor almost as much, if not more, for wholesale services (that do not entirely comprise the retail product) than the total price charged at retail by the upstream provider and competitor for the complete retail product.

2. • *Technical Characteristics.*

DSL. When an independent ISP sells DSL to a customer, the first thing to do is “qualify” the loop. SBC often receives orders for a DSL loop and reports that the line will not support the desired speed or indicates there is a potential inhibiting condition with the line. This is so even where

³⁴ <http://www.swbell.com/DSL/content/0,2546,11,00.html#standalone>

³⁵ It is not really clear which SBC entity provides DSL service. Although ASI was required to provide the service as a result of the Ameritech merger, ISPs still deal with the same SWBT employees for all matters, and SWBT is the contracting party with the ISPs for VPOP, cell relay and DSL.

³⁶ SBC charges the ISP \$35 for a DSL line, including the use of the DSLAM. Earthlink (Initial Comments at 11) estimates the cell relay costs to be \$8.00 per customer. This sums to \$43 per customer, leaving only \$6.95 to cover all of the ISP’s other costs and to provide any profit. TISPA therefore agrees with Earthlink that the ILECs are engaged in a price squeeze.

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the customer already has or had DSL service at the same premises. ISPs throughout the SBC 13 state area are reporting that they try to prequalify numerous loops and consistently receive a large number of negative responses. Sometimes the customer directly contacts SWBT. SWBT refers the call to SBCIS, which does a new prequalification on the same loop and receives a positive response and the service is installed, with SBCIS as the ISP.

This problem indicates that SBC is violating either the requirement that competitive providers have access to services that provide the same technical characteristics, or the requirement that competitive providers be provided OSS systems at parity with those used within the ILEC ESP operations.

3. • *Installation, Maintenance, and Repair.*

DSL and ISDN. ISPs consistently report problems with installation of DSL loops. The information that has been provided shows that SBCIS receives favorable treatment with regard to prequalification, installation and trouble resolution. This problem is not limited to DSL. Several ISPs report that they have been denied ISDN PRI service, but that SBCIS was provided the service.³⁷

When users contact SBC to complain about poor service or an inability to reach their ISP, SBC personnel consistently blame the ISP for problems that are clearly attributable to SWBT. Invariably, the SBC employee follows with a pitch for SBCIS and implies that the problems will go away if the user changes to SBCIS. The installers and repair persons in the field have a pattern or practice of disparaging independent ISPs and praising SBCIS.³⁸

³⁷ *See, Attachments 1 and 4.*

³⁸ *See, Attachment 1.*

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Finally, SBC personnel that telemarket SBC's DSL and Internet services consistently tell end users that the only way to get DSL service is to order it through SBCIS. This fact alone completely undercuts SBC's plaintive claim that it has no incentive to harm its "DSL partners." It does so every day. With vigor.

The disparagement is not limited to installers or repair persons. Sales representatives also have a pattern of belittling independent ISPs and attempting to steer users to SBCIS. JUMPnet. While the Commission may have allowed joint marketing, the rules cannot be read to sanction competitors' product or service disparagement by ILEC personnel.

4.
 - *End User Access.*
 - *CEI Availability.*

VPOP. The inability to subscribe to the PSTN portion of VPOP – unbundled from the modem management and frame/ATM portions – violates the CEI requirement that end users have the same access to competitive ISPs as is made available when end users procure enhanced services from the BOC enhanced operations. Although an ISP can obtain metro or LATA-wide dial-up by subscribing to VPOP service, the ISP must give up control of its modems and also subscribe to SBC cell relay service.

ISDN PRI. In similar fashion, SWBT refuses to provide ISDN PRI service to certain ISPs, even though it has informed the FCC that the service is available statewide, and a Texas PUC Rule requires statewide availability. Several of the ISPs report that at the same time they are denied

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service, SBCIS is able to obtain PRIs, and then advertises that users will not get the busy signals suffered by users of competitive ISPs.³⁹

³⁹ See Attachments 1 and 4.

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5. • *Minimization of Transport Costs.*

VPOP. VPOP service minimizes ISP and end user transport costs because it provides for LATA-wide toll free dial up. Restricting availability of the service and bundling modem management, ATM and PSTN use increases transport and equipment costs of competitive ISPs.

Calling scope/call forwarding issues. Absent LATA-wide dial up capabilities or some other means to collect calls from wide areas, an ISP must obtain basic local service and place equipment in each local calling area, then obtain transport to the main ISP point of presence. In rural areas that typically have relatively small local calling scopes this is a particular problem which has significantly impeded availability of affordable Internet access. TISPA addresses this issue in more detail below.

ISDN. SWBT refuses to provide ISDN PRI service to Texas ISPs in exchanges or cities with less than 50,000 citizens, or when it is provided, insists on giving a “calling scope” associated with a distant metropolitan area.⁴⁰ Interestingly, SWBT will sometimes provide “local calling scope” for ISDN BRI. Customers can choose the “local calling scope” or that of the major metropolitan area. If they choose the latter, the end user must then also purchase analog service for local calling. ISPs cannot provide higher speed access using ISDN if users in smaller areas must incur long distance charges to connect, and users will not purchase ISDN if they must also buy analog service to make local calls.

⁴⁰ See, Attachments 4 and 6.

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To add to the problem, SWBT restricts ISPs that can obtain ISDN in rural areas from using optional extended calling services so that customers in outlying areas that may be associated with a major metropolitan area for optional extended area service (or metro service) can call the ISP. *See*, SWBT Texas Digital Link Service Tariff, Section 12, Sheet 8.1, ¶ 7.3.⁴¹ ISDN cannot use optional EAS.

SWBT also has an ISDN-related service called “Disaster Routing” which is essentially call forwarding. Although SWBT initially marketed this service as a way to deal with the “calling scope” problem, Company personnel are now claiming use of Disaster Routing to call forward to a POP out of the dialing party’s local calling area violates SWBT’s tariff.⁴²

⁴¹ Available at http://info-search.sbc.com/data/tariff/data/pdf/texas/dlst.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fdlst%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=SelectVideo&&X1X – page 157 of 217.

⁴² *See*, Attachment 6.

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POTS. An independent ISP cannot obtain even a basic analog service in a smaller city and then subscribe to a combination of either SWBT's "Local Calling Plus" and call forwarding to most efficiently collect calls in small exchanges and forward to a main POP that serves multiple exchanges.

Although TISPA disagrees, SWBT takes the position that its General Exchange Tariff, Call Management Service, Section 10, Sheet 2 ¶ 2.9⁴³ prohibits this approach. This is so even though the subscriber to SWBT's Local Plus service expands the calling scope and the forwarded call is therefore within the local calling area.⁴⁴

SWBT also will not allow ISPs to use call forwarding in association with its optional toll package such as 1+ Direct Saver⁴⁵ to effect essentially the same result. This should be allowed,

⁴³ Available at http://info-search.sbc.com/data/tariff/data/pdf/texas/get.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fget%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=cannot+be+used+on+a+continual+basis&&X1X – page 533 of 1088. The cited text provides that “Services with call forwarding capabilities (including Call Forwarding, Selective Call Forwarding, Simultaneous Call Forwarding, Call Forwarding-Busy Line, Call Forwarding-Don't Answer) cannot be used on a continual basis to expand the local calling scope beyond that available to a customer's premise.”

⁴⁴ At least that is what SWBT says at http://www.swbell.com/Products_Services/Residential/ProdInfo_1/1,1973,93--6-3-,00.html.

⁴⁵ See, http://www.swbell.com/Products_Services/Business/ProdInfo_1/1,1973,154-0-6-1-0,00.html

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because the ISP is paying the long distance charges associated with calls that are forwarded to a number in a distant exchange within the LATA. General Exchange Tariff, Section 10, Sheet 3 ¶ 3.2.

The sum of these various positions and actions is that SBC imposes additional transport costs on competitive ISPs that place them at a significant disadvantage in comparison to SBCIS. This violates the Commission's CEI rules.

The Settlement between SBC and TISPA required good faith negotiations over a way to provide "local calling scope" for ISDN PRI and "LATA-wide origination" for both ISDN and POTS. SBC never made any attempt to provide an economical arrangement for either of these topics. For ISDN, it could have been as simple as the "Ensemble" product offered by Ameritech.⁴⁶ Despite TISPA's request, SWBT has refused to make a similar product available in Texas. SBC will not make efficient and reasonable methods available to ISPs to provide analog or higher speed dial-up service available in non-metropolitan areas. SBC continues to imposing inefficient and unreasonable transport and equipment costs – unless the ISP obtains SBC's "now you see it, now you don't" managed modem service (VPOP).

6. • *Availability to All Interested ISPs.*

As shown above, SBC has not made essential telecommunications inputs (including nondiscriminatory access to network information) such as DSL, ISDN, LATA-wide calling capability or alternatives available to competitive ISPs. SBC personnel have mislead users or ISPs and users

⁴⁶ See, <http://www.sbc.com/ISP/0,2951,9,00.html>.

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about available services to connect to unaffiliated ISP enhanced services. All these are violations of the CEI “availability” rule.

BOCs are required to file annual ONA reports that include information on: 1) annual projected deployment schedules for ONA service, by type of service (BSA, BSE, CNS), in terms of percentage of access lines served system-wide and by market area; 2) disposition of new ONA service requests from ISPs; 3) disposition of ONA service requests that have previously been designated for further evaluation; 4) disposition of ONA service requests that were previously deemed technically infeasible; 5) information on Signaling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN) projected development in terms of percentage of access lines served system-wide and on a market area basis;⁴⁷ 6) new ONA services available through SS7, ISDN, and IN; 7) progress in the NIIF on continuing activities implementing service-specific and long-term uniformity issues; 8) progress in providing billing information including Billing Name and Address (BNA), line-side Calling Number Identification (CNI), or possible CNI alternatives, and call detail services to ISPs; 9) progress in developing and implementing Operation Support Systems (OSS) services and ESP access to those services; 10) progress on the uniform provision of OSS services; and 11) a list of BSEs used in the provision of BOC/GTE's own enhanced services. In addition, the BOCs are required to report annually on the unbundling of new technologies arising from their own

⁴⁷ SS7 data must be reported by TR 317 and TR 394; ISDN data by Basic Rate Interface (BRI) and Primary Rate Interface (PRI); and IN data by release number or other designation type. *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7660, ¶ 29, n. 44.

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initiative, in response to requests by ISPs, or resulting from requirements imposed by the Commission.⁴⁸

⁴⁸ BOCs are also required to submit annual affidavits declaring nondiscrimination against ESPs. *CI III Remand Further Notice* ¶¶ 103, 113, note 263. SBC's 1998 affidavit is at http://gullfoss.fcc.gov:8080/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6006444052. The annual nondiscrimination affidavit for calendar years 1999 and 2000 could not be located, despite a diligent search. The 2000 report regarding OSS development was so empty as to be worthless. *See*, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512565400 (page 7). SBC's 1999 (http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6011256944 - page 8) report is also empty, but appears to claim that it meets the *CI III* rules relating to OSS for ISPs because it has an OSS for CLECs. Obviously, the statutory bases for the duties to CLECs and ISPs are different, although the OSS used for CLECs could possibly work, if SBC made the same OSS available to ISPs. It does not.

In addition, the Settlement required SBC to provide a "flow-through" OSS to ISPs using SBC's DSL service. SBC has failed and refused to truly even discuss implementing this requirement. TISPA therefore joins in the Comments by CISPA relating to OSS.

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ISDN. SWBT's ISDN information as filed in its reports is inconsistent with the information provided by TISPA. SWBT's 2000 report indicates that ISDN is available throughout Texas.⁴⁹ As noted above, however, SWBT has told several ISPs and users attempting to connect to ISPs over SBC facilities that ISDN BRI and/or PRI is not available in certain areas of Texas. SWBT's CEI plan states that SBCIS uses ISDN PRI.⁵⁰ If SWBT's reports to the FCC are correct, then SWBT has violated the CEI requirement that the services used by the BOC ESP be equally available to all competitive ESPs. In other words, SWBT appears for some reason to deny ISDN availability to some ISPs or their customers in certain parts of Texas, contrary to representations to the state and federal commissions and a Texas regulatory requirement that the service be available statewide.

⁴⁹ See, http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512565405. The ISDN information is contained in Exhibit C to the filing. The Report is consistent with Texas regulatory rules, which require statewide availability of ISDN. Texas PUC Substantive Rule 26.142(c), <http://www.puc.state.tx.us/rules/subrules/telecom/26.142/26.142.cfm>.

⁵⁰ SWBT CEI Plan, p. 5.

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DSL. Competitive ISPs that use SBC's⁵¹ DSL have a different (or at least considerably less speedy and accurate) OSS than does SBCIS. TISPA members consistently report that the system they use often indicates some inhibiting condition exists in the desired loop. These TISPA members often subsequently learn that the same loop is soon thereafter prequalified by SBCIS and DSL at normal speed is available. The OSS used by SBCIS is obviously different, more accurate and faster than the one offered to competitive ISPs. Texas' experience is quite similar to that in California.

⁵¹ DSL was initially provided by SWBT, but has been "transferred" to SBC ASI. A principal need for OSS, however, is related to prequalification of DSL-capable loops. Those loops are still provided by SWBT, even if via ASI, and OSS is required for prequalification of them. In addition, the correct area of comparison of OSS systems is between SBCIS and competitive ISPs. Unaffiliated ISPs do not use the same OSS as SBCIS.

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No BSA for Access Channels useable for DSL directly provided by ISPs. The ONA rule requires RBOCs to make available Basic Service Arrangements for the loops an ESP may use to provide service.⁵² SBC has a number of loop BSAs, but ISPs have no ability to directly secure an interstate BSA that would allow the ISP to order a DSL-capable dedicated channel to the customer premises that is cross-connected to another DSL-capable loop running to the ISP's POP. If this arrangement were made available, the ISP could offer DSL service without the need for an intervening "Data" LEC.⁵³ While the use of two loops reduces the effective reach of DSL service, it allows the ISP to eliminate the middle-man.

SBC has aggressively moved to prohibit direct provision of DSL by ISPs. SBC actively polices the use of the state and federal private line/special access tariffs by ISPs and disconnects any ISP that is found to be directly providing DSL. SBC stated its position on this issue in the Texas § 271 proceeding.⁵⁴ ONA, however, requires that this application be made available as an interstate BSA. ISPs merely want a circuit without loading coils or excessive bridged tap. If the Commission were to require that this BSA be made available, it would immediately increase competition for broadband service. This service should be available, at least under ILEC federal ONA tariffs.⁵⁵

⁵² *Phase I Order* at 1039-40, ¶¶ 157-158.

⁵³ The Commission may not be aware that the first DSL applications were actually provided directly by ISPs using "dry copper" pairs ordered under state private line "burglar alarm" tariffs, or the interstate special access tariff. This was done without collocation, because the DSLAM was located in the ISP POP rather than the central office. Unfortunately, SBC has succeeded in eliminating this form of competition with its DSL product. Simple enforcement of the ONA rules would allow ISPs to not be hostage to either hostile ILECs or financially weak data CLECs that go out of business overnight.

⁵⁴ *See*, Attachment 7.

⁵⁵ The Commission has recognized that DSL can be intra- or interstate depending on the end point of the

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TISPA also notes that while SBC's CEI plan mentions ADSL on page 8, it does not explain how an ISP gets access to DSL-capable loops under CEI/ONA, and especially without having to purchase the loop bundled with SBC's DSLAM port or cell relay service.

D. Other Discriminatory or Unreasonable Practices and Acts.

Steering. End users that call or are called by SBC about DSL are steered toward SBCIS to the exclusion of independent ISPs. All casual callers to SWBT about DSL are now referred to SBC Internet; independent ISPs are mentioned only if the user specifically and repeatedly asks for a non-Bell ISP. Many times, the SBC representative will incorrectly tell the user that DSL is only available if the user also obtains an SBC affiliated Internet service. This misrepresentation has undoubtedly lead to reduced consumer choice, and significantly fewer sales by non-affiliated ISPs.

communications. *Advanced Services Remand Order*, ¶¶ 15-45. Therefore, SBC must also make DSL-capable circuits available to ISPs in their state tariffs for applications, such as for broadband connections to corporate LANs that do not involve transmissions out of state.

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DSL Terms and Conditions. SBC has a general description of its DSL offering to ISPs at <http://www.sbc.com/ISP/0,2951,25,00.html#portfolio>. TISPA is also attaching a copy⁵⁶ of the contract that non-affiliated ISPs must sign to use SBC DSL service to allow high-speed access to users. SBC will not negotiate any aspect of this contract with ISPs; it is purely “take it or leave it.” Note also that the contracting party for SBC is not ASI. Instead it is **SWBT**. This alone destroys any charade of separation between any of the SBC operations for loop, DSL or Internet access. It all resides within SWBT, which is of course integrated with SBC’s Internet operations.

All carriers – whether they be CLECs or ILECs – must still maintain just, reasonable and nondiscriminatory rates, terms and conditions for telecommunications services. SBC cannot avoid §§ 201 and 202 of the Act by pretending to operate through a separate subsidiary. SBC’s DSL terms are unjust and unreasonable. And, they are discriminatory.

The change in relationship between ISP and SBC The most significant issue is highlighted by the name of the agreement itself: “Internet Access Service Marketing Program.” SBC has changed the nature of the arrangement, from one where the ISP purchases the service at wholesale to one where the ISP is “marketing” SBC’s retail service. ISPs are now sales agents, and not SBC customers. ISPs do not obtain a service from SBC; they are merely sales agents. This alone violates the Act and *Computer Inquiry* rules.

This significant change in the nature of the transaction ripples throughout the entire document and leads to a series of consequences that will materially diminish the relationship between the ISP

⁵⁶ See, Attachment 8, reprint.

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and the user. In addition, it limits to a great extent the ability of the ISP to have input into or complain about contemplated or actuated changes to SBC's program, pricing and terms and conditions for DSL.

Under the prior regime, the ISP was not "marketing" SBC's "Internet access services"; instead, the ISP arranged network access so that the ISP could then provide network services. The ISP was the one providing Internet access. The ISP had the choice of being billed directly for the DSL service or having SBC bill the user. Under the new contract, the end user will be receiving an SBC service and the bill. (§ VI.7) Under § IV. 2, the ISP must inform the user that the "network portion" (undefined) of the service is being provided by SWBT. SBC reserves the right to demand a deposit from the end user (§ V.3). SBC will only pay commissions on DSL services billed to the ISP if the DSL is used only for non-telecommunications service. (§ VI.4.i) SBC may assert that if the user is using any software that offers Voice over IP, then the DSL is not being used for non-telecommunications service, and no commission is due. There will undoubtedly be argument over whether the "other service" is a telecommunications service. Note also that the contract does not clearly indicate that DSL is a "private line" or "virtual private line" service that would entitle the ISP to commission payment. (§ VI.4.iii)

There are undoubtedly several reasons for this change. First, SBC is setting up an argument that DSL is not a telecommunications service, but is rather an information service and should therefore not be regulated. Second, SBC is acting very consistently with the cable companies in the way they are approaching broadband network access provision – working hard to maintain direct

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contact with the end user, to attenuate the ISP's relationship with the user, and to minimize the economics and value of independent ISP network services.

No ability to have input in or complain about changes to service, price or terms. Sections II.2 and IV.7 give SBC the unilateral right to add or drop services the agent can market (including DSL), and to change terms, conditions and "specifications" of the services. In other words, the ISP is essentially giving up any right to have input into or complain about any of these things. Again, since the ISP is a sales agent, and not a customer, SBC can claim that the ISP does not have standing to complain to regulators or a court. And SBC could unilaterally prohibit the ISP from marketing DSL without breaching the contract. Section XII.10 allows SBC to end the entire program on three months' notice.

SBC reserves the right to steal the agent's customers, but imposes significant and costly duties on the ISP. SBC reserves the right to pitch its competing Internet and CPE services and equipment to sales agent's customers. (§ III.4) And, if SBC is successful in stealing the user within 6 months of the time the ISP sold the customer, SBC can withhold or get a refund of the commission paid to the ISP. (§ VI.1, Exhibit C, § 2(e)) At the same time, SBC imposes a significant amount of procedural and substantive duties on the ISP, at the ISP's costs. (§§ 3.1, IV.3, IV.4, IV.8, IV.9, IV.10, V.4, X.3, XII.13)

SBC eliminates volume discounts, but maintains volume requirements. SBC appears to have eliminated volume price discounts – at least for independent ISPs. It is, of course, impossible to know whether SBC's own Internet operations have volume discounts. CISPA claims that SBCIS and Prodigy do enjoy such discounts. Regardless of the merits of volume discounts, any discrepancy

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as between SBC's operations and independent ISPs would obviously be discriminatory. The apparent decision to not have volume discounts, however, could change at any time, given SBC's unilateral right to change prices and terms. What is interesting is that the new contract continues to have volume expectations that seem to be subject to SBC's whim. If the ISP does not meet those expectations, it can be terminated from the program. (§ III.5)

The ISP cannot contract out marketing and cannot use telemarketing or ADADs. The contract significantly limits the ISP's ability to contract out marketing and the manners in which it markets. (§ IV.5, IV. 7, IV.14, CII.3) There are already regulations on use of ADADs in Texas, so there does not appear to be any real reason for this prohibition. It merely discriminates against unaffiliated ISPs, since SBC has significant telemarketing for SBC's bundled DSL/Internet offering.

The benefits of exclusivity are unclear. The ISP has the choice of being an exclusive or non-exclusive representative. The only clear difference between the two is the permitted use of SBC's logo and a link on SBC's web page. Exhibit C to the contract is quite unclear about whether there is a price or commission difference between the two.

The assignment, intellectual property terms and definition of affiliate are not reciprocal, and unreasonably favor SBC. SBC gives itself more protection on intellectual property terms and the definition of an SBC affiliate is different than the definition of what an ISP's affiliate would be. The ISP cannot assign this contract, but SBC apparently could. A reasonable contract would be bilateral: the definitions should be the same and all general terms should be reciprocal.

SBC attempts to require the ISP to follow non-discrimination and government contractor rules that do not apply, and are onerous on small businesses. Section XII.13 requires the ISP to follow

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certain nondiscrimination requirements and government contractor rules. While TISPA agrees an ISP should not discriminate against any suspect classification, many of these specific requirements typically exempt small businesses as they are quite costly to implement and report. For example, Exhibit A requires the ISP to develop and maintain Affirmative Action Plans and, ironically, to subcontract with small, disadvantaged and women-owned business concerns. The latter duty is ironic since the contract simultaneously prohibits subcontracting.

There is no service description of the DSL service, or even the “Internet Access Service” that the ISP is marketing; this gives SBC complete and unilateral control Neither the contract nor Exhibit C provides a service description. As previously noted, SBC will have the right to change the program, as well as the service definition, terms, conditions and prices. This will allow SBC to do virtually anything it wishes that would competitively harm the ISP’s network services to the end user. For example, it is possible that SBC could pitch a user to download a program that would cause an icon to appear on the screen. If the user clicked on the icon, the modem could create a separate PVC and link to a gateway operated by SBC that provided many types of goods, services and content that directly compete with the ISP’s service. The user’s PVC to the ISP would appear to slow down and the user would blame the ISP for perceived slow connect speeds. SBC would be using the modem leased or sold to the user by the ISP, and detrimentally affecting the DSL service. All of this would be without compensation to the ISP by SWBT. The contract would allow these things to occur.

There is some indication that the service has changed to “best effort” rather than guaranteed minimum speeds. The contract would allow SBC to further change minimum speeds at its whim, and with no recourse.

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SBC's mandatory DSL agreement is an adhesion contract that does nothing but limit ISPs rights and harms their competitive interests. The only discernible benefits are:

*\$50 commission, which effectively wipes out the new \$50 service order charge.

Note SBC can end the commission at any time.

*A listing and link on SBC's web site. This site is not well constructed, nor does it provide a lot of information. It certainly is not as prominent as the links to SBCIS and Prodigy.

SBC's DSL contract violates §§ 201 and 202 of the Act, and the *Computer Inquiry* rules that apply to nondominant carriers – if the Commission persists in accepting the obviously untrue fiction that ASI is not the same as SWBT and both are joined at the hip with SBCIS. Once one shines the light on SBC's DSL program and compares it to the ONA and CEI requirements for BOCs, it becomes quite clear that SBC's DSL flagrantly violates the rules

III. CONCLUSION

SBC and its subsidiaries and enhanced operation have committed significant and persistent violations of the Act and FCC rules. The similarity of the reports and the widespread nature of similar actions from multiple operating territories clearly show that SBC has been engaging in a pattern or practice of discriminatory, unreasonable and illegal behavior that is strategically designed to harm independent ISPs. This pattern and practice applies to several telecommunications services – analog, ISDN and DSL – and demonstrates a complete disregard for the law and rules. The purpose can only be to maximize SBC’s market power in the enhanced service market.⁵⁷

⁵⁷ Given persistent reports of remarkably similar transgressions against CLECs, the real answer may be that SBC simply disapproves of competition in any market and will exercise its market power in telecommunications services to obtain or preserve dominance in both the telecommunications and information service markets.

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The Commission made the decision to allow SBC to provide enhanced services on an integrated basis, but adopted fundamental principles and rules to protect competitive ESPs. ESPs to this day still rely on SBC for the telecommunications services (or the UNEs provided to CLECs) that are an essential input to the provision of information services, and especially Internet access. SBC's obviously untrue claim that the rules of engagement should be abolished because it has no incentive to kill its enemies must be ignored. The rules must be strengthened and they must be enforced. Failure to protect independent ISPs from SBC's constant depredations will surely mean the end of the independent ISPs that are responsible for the incredible impact the Internet has had on American society.⁵⁸

The Texas Internet Service Providers' Association respectfully requests that the FCC continue each of the rules for ONA and CEI, and set in place stronger mechanisms to police against and penalize violations of those rules.

Respectfully submitted

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⁵⁸ See, *The FCC and the Unregulation of the Internet*, *id.* at 1.

Attachment 1

“SBC strangles and then blames the victim”

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The following are some correspondence to or from various ISPs related to SBC service issues:

Guy:

After receiving your voice mail that you had contacted Carol Stein and she would be getting in touch with me I assumed you didn't want the problems we are having documented. Jimmy has forwarded your email to me so I will do my best to explain the experiences we have had with your company. I must admit I have been lax in writing down dates when these problems occurred as I really thought the situations would be remedied and credit would be given in a timely manner so I will do my best from memory.

My first bad experience with SWB started in January of 98 when I was told there were no more facilities for PRI lines (these are the T1 lines used to take calls locally from our customers) and that no one knew when they would be available. We waited until June of that year to receive additional lines. During that time Caprock Internet Service opened for business in Odessa and was told the same thing about the PRI lines. Since their equipment was not configured for PRI lines like ours they were able to bring in channelized T1 lines initially and start taking calls. SWB went against their tariff on the sale of this T1 by not charging the company for installation. When PRI lines came available they dropped their channelized T's. The only solution NetWest could come up with was to order ISDN lines. We only had equipment to handle 8 ISDN lines and were not in the position to spend tens of thousands of dollars for a temporary fix. We ordered the 8 lines and they immediately filled up. From January to June NetWest lost over 1200 customers to Caprock and Midland based Internet providers who were able to give access to our customers when we could not. No compensation or discount was given. In August of 98 we had the same problem again. We waited 2 months for additional PRI lines to be installed. Customers were lost to other service providers and no compensation or discount was given by SWB.

In January 99 we again had the same problem and waited 8 weeks this time for new lines to be installed. Customers were lost to other service providers and no compensation or discount was given by SWB.

In May of 99 we ordered PRI lines for our Abilene POP. In July we ordered additional PRI lines and again were told no facilities available. We waited until October to get additional lines. When we opened the Abilene POP it was primarily to bring Internet service to the surrounding cities. Snyder was the main city we wanted to reach. We had planned to put a rollover number in Roscoe to bring Snyder traffic into Abilene. We were told that we should no longer order DRS numbers that would roll calls to other cities because the tariff was changing and we would be charged by the minute on these calls and that the ones we had now would not be "Grandfathered". So at that time we

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decided to put a physical POP in Snyder. We ordered an Integrated Pathway T1 for our Snyder POP. The circuit was installed improperly and was also billed at a much higher rate than it should have been. We waited until October for the line to be installed right. We went through numerous periods of downtime while SWB tested the circuit to try and determine the problem. Another ISP in Snyder had the proper circuit installed during this entire 5month period that it took to figure out how to put this line in right. After the line was finally installed properly which coincidentally fell at the same time additional PRI's came available for the Abilene area we immediately ordered an addition IPA for Snyder. This time it took 2 months to install the line properly. In December of 99 we ordered an additional IPA for Snyder and waited 5 weeks after installation before the line actually worked. To date the tariff has not been changed for the DRS numbers so we could have put this in to begin with and saved thousands in equipment and monthly expenses. During this period that we were not able to take calls due to no facilities available and not being able to install an IPA properly NetWest lost incalculable amounts of money. We had to give 2months free service to our existing customers in Abilene and the surrounding area to keep them from going elsewhere. We ended up losing many to SWB who sent a mailer to Abilene residents and surrounding community residents offering Internet service with "No busy signals" during this same time when SWB couldn't get local providers service!

The only credits we have received were on the IPA lines that we were over billed on to begin with.

During the last part of 98 the first 4 months of 99 and the last 2 months of 99 we had numerous calls from customers complaining of being dropped from our service in the middle of an Internet session. We called SWB tech support and had Charles Chitwood come by to test our PRI lines for trouble. He could never find a problem. The dropped connections kept occurring. We spent thousands of dollars with Ascend tech support and hundreds of man hours working on this problem with our equipment manufacturer and were told over and over that it was a SWB problem. SWB couldn't find it or fix it. Recently Jones Motors opened their doors at their new location on 42nd street and we ordered 8 ISDN lines for them. SWB could only put 7 of the ISDN lines in because you ran out of facilities. Shortly after the lines were installed the calls going into Jones Motors were dropped in the middle of a conversation. This happened repeatedly and SWB blamed it on the phone equipment. The equipment was entirely replaced and the problem continued. Turns out this is the same problem that NetWest customers had dialing in to us and it is because SWB does not have enough pathways to terminal to complete all the calls. So when someone dials in your equipment frees up a line by knocking someone already on off. This problem was discovered by Saulsbury Telecom when they overheard SWB technicians discussing what was happening.

For the past 2 years NetWest has been experiencing the message "all circuits are busy" when our Odessa customers dial in during the evening. We have open PRI lines waiting to take these calls but they can't get here. After discussing the problems that NetWest has had with SWB employees in other parts of the state the response has been we knew and we know that Odessa has a problem. NetWest feels that a credit on our account is due and it should be in the amount equal to the highest

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month of service paid in 1999. This is somewhere around 24,000.00. Our actual loss has been determined in excess of 185,000 due to SWB poor performance, negligence and mismanagement. We also expect that an account representative with our interests in mind will be assigned to us shortly. We are currently under 5 year contracts for over 30 PRI lines with SWB and at this point will use past experience to break the contracts and go with a local CLEC if things are not changed.

Please inform me of your decision on how to proceed with this matter as soon as possible.

Sincerely,
Allen Jenkins
NetWest Online

P.S. Why is it that Odessa residents have to suffer when our sister city Midland only a short distance away never experiences these problems?

Southwestern Bell Problems 2-10-00

Mickey:

Here's what happened recently:

In January I ordered an additional PRI line for our Abilene location a few days after I ordered one for Snyder. This was done with Scott Moore in Abilene. A few days later on the 1st of February I received an email giving me the circuit numbers for the Snyder line. Later that week I called and asked about the Abilene circuit and was told he "hadn't heard anything yet". The next week I again called and asked about the PRI for Abilene. He looked up the date that I ordered it and said that he should have heard something and would find out and let me know. He called the next day and told me the order hadn't been worked because he never received my faxed contract. I re-faxed the agreement. He called me a day or so later and told me I wasn't going to like the news and proceeded to explain that they were out of facilities for PRI's in Abilene until mid April.

I talked to Carol Steen today and she agreed to waive the installation fee for a channelized T1 in Abilene. This is basically the same thing I use except it is configured differently and I will have to use a different phone number from the one I use now. So I have ordered this with the understanding that it will be replaced with a PRI line when it comes available. This line costs 1800.00/month. My normal line costs 475.00/month. SWB still advertises no busy signals in Abilene and has lines for themselves but not for other ISPs. I am now going to have to have to spend almost 4 times what I should and give out a different number to service my Abilene customers.

Thanks!

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From: Allen Jenkins [gkins@nwol.net]
Sent: Tuesday, May 09, 2000 2:12 PM
To: chad@onr.com

Chad:

The following are a few of our customers that we sold equipment to along with ordering their ISDN line. Bell called them after canceling our agent status and asked them to move to their DSL service. We have had some cancel and go with Bell. If you need me to supply more customers or need more info let me know. Thanks!

Allen

Aprotex Corporation/Steven Hildreth/1011 W Washington, Midland
LPC Consulting/Larry Porter/1711 W 25th, Odessa
Dr Brown, DDS/David Brown/2453 E 11th, Odessa

From: COOPER, SUSAN H (SWBT) [BH3813@txmail.sbc.com]
Sent: Thursday, June 29, 2000 2:26 PM
To: gkins@nwol.net
Cc: STEEN, CAROL (SWBT); SORRELLS, RICK D (SWBT)
Subject: FW:

Mr. Jenkins,

My name is Susan Cooper and I am an Area Manager with SW Bell in the Internet Service Provider group. I apologize for the problems you have been having. I want to correct all of that. I need to know the name of your company and your main billing number. I have a group of Communications Consultants that are assigned to customers. As soon as I receive that information from you, I will provide the name of your contact and have them give you a call.

I look forward to hearing from you.

Susan Cooper
Area Manager-ISP Sales Texas

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972 706-2894

> -----Original Message-----

> From: SORRELLS, RICK D (SWBT)

> Sent: Thursday, June 29, 2000 1:21 PM

> To: COOPER, SUSAN H (SWBT)

> Subject: FW:

>

> Can you handle.

> Thanks!!

> Rick

>

> -----Original Message-----

> From: STEEN, CAROL (SWBT)

> Sent: Thursday, June 29, 2000 1:16 PM

> To: gkins@nwol.net

> Cc: SORRELLS, RICK D (SWBT)

> Subject: RE:

>

> Allen,

>

> I'm not sure who your account manager is so I called Rick Sorrells, the
> Sales Manager (my counterpart) over the group that handles ISP's. I left
> him a voice mail that I would be sending this email to him so he could
> have the proper person get in touch with you.

>

> His email address is rs7585@txmail.sbc.com

>

> Hope this helps!

>

>

> Carol Steen

> Regional Sales Manager

> Select Accounts

> 915 498-2500

>

> -----Original Message-----

> From: Allen Jenkins [mailto:gkins@nwol.net]

> Sent: Thursday, June 29, 2000 1:02 PM

> To: STEEN, CAROL (SWBT)

> Subject:

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>
> Carol:
> After being told my account had been transferred to a new sales
> group with SBC I called the number that was given to me to introduce myself and
> ask a few questions. When I call the number it goes directly to
> Stephanie's
> voice-mail. I have left 7 messages since April 10th (the last one on
> June 26th) and she has yet to return my call. I guess she has heard what
> a pain in the ass I am:) Could you put me in touch with someone to talk to
> for placing orders, etc? Thanks!
> Allen

From: COKE, MIKE D (SWBT) [mc2540@txmail.sbc.com]
Sent: Thursday, November 18, 1999 6:17 PM
To: gkins@nwol.net
Cc: MILLICAN, TRACY L; MOORE, SCOTT E; STEEN, CAROL
Subject: Service Issues

Mr. Jenkins,

When I tried to call you November 1st, I missed you but left you a voicemail message. Since I know you are very busy and you have not had a chance to call me back, I thought I would sent you an email to address the concerns that Tracy Millican discussed with me.

Tracy explained the situation with the installations of the Access Advantage Plus in Snyder. I understand that we have issued an adjustment for one month's service do the need to convert from lines to trunks on the Access Advantage Plus to obtain the access speeds you desired. I also understand that Tracy and Scott Moore offered one additional month's service adjustment for the delays during the period of time that we were actually switching from one Access Advantage Plus with lines to the one with trunks. Mr. Jenkins, I feel that is a fair offer.

Tracy informed me that you had requested additional adjustment for lost revenues due to your decision not to bill your customers during the time frame surrounding this conversion. Unfortunately, we cannot make a billing adjustment for your service due to revenue losses suffered due to your decision not to bill your customers. As a Southwestern Bell Authorized Agent, I am sure that you are aware of the tariff provisions for adjustments

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for service outages. Southwestern Bell can only adjust for the Southwestern Bell service in question. We are not responsible for any loss of business or revenue as a result of the service outage.

Mr. Jenkins, we are realigning our territorial responsibilities for 2000. Carol Steen in Midland will be the Regional Sales Manager with responsibility for your account next year. I have discussed this situation with her and we are in agreement on our position. If you would like to discuss this matter further, please feel free to call me at 806-472-1700.

Thank you,

Mike Coke
Regional Sales Manager
Select Accounts
Southwestern Bell Telephone Company
2010 Ave. R, Room 201
Lubbock, TX 79411
Phone: (806) 472-1700
FAX: (806) 741-5646

From: Allen Jenkins [gkins@nwol.net]
Sent: Friday, December 29, 2000 4:23 PM
To: Keri Vest
Subject: Abilene PRI

Keri,
Got a PRI in Abilene down again. The ticket # is CW237217. Please credit my account. Also I need to confirm that you received my T1 point to point order. Thanks!
Allen

From: VEST, KERI (SWBT) [kv5274@sbc.com]
Sent: Wednesday, January 10, 2001 3:17 PM
To: gkins@nwol.net
Subject: FW: Midland/Odessa T1

Allen,
I am so sorry about your cutover. Deborah came and told me what happened. I have sent that information off several times. I have referred

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it to my manager and she is trying to get us help. If I could cut it myself I would. The Abilene pri order is being handled. It is going through a facility check today to make sure the CO has enough equipment to handle. Then once I get the okay I can issue the order. As soon as I have some better news for you I will let you know. thanks.

Keri Vest
ISP Group *
Southwestern Bell
877 767-9477
kv5274@txmail.sbc.com

-----Original Message-----

From: VEST, KERI (SWBT)
Sent: Saturday, January 06, 2001 9:23 AM
To: 'gkins@nwol.net'
Cc: BMTISP
Subject: Midland/Odessa T1

Allen,

Here is the information for the Midland and Odessa T1. The order number is N080717 with a due date of 01-17-01. I have Brendon Cole as the contact for both locations. This T1 is on a three year contract for \$577.32 monthly and \$814.00 installation. The bill is under James L Davis as I could not find any service billed under West Texas Gas. If we were to bill it under West Texas Gas it would show as a new bill name and I would have to collect a deposit of \$1000.00 before we could install the circuit. I did need a signed contract so I have forward all of the above information and the contract to Brandon Cole. Please e-mail or call me if you have any questions. I really appreciate your patience with the past crazy week. I should have the coordinated cut information Monday and I will get it out to you ASAP. Thanks. :-)

Keri Vest
ISP Group *
Southwestern Bell
877 767-9477
kv5274@txmail.sbc.com <mailto:kv5274@txmail.sbc.com>

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From: Allen Jenkins [gkins@nwol.net]
Sent: Monday, January 29, 2001 10:31 AM
To: Keri Vest

Keri:

Wanted to let you know that the cut-over in Amarillo didn't go well at all. Bell was the only company not ready and caused us to be down for over 3 hours. Adrian Gay dropped the ball completely.

Today the PRI's in Abilene are down, they're giving busies and going to D channel failure over and over.

Maybe you could give me a healthy credit to make up for my last two months of misery?
Allen

From: BAKER, PHIL DOUGLAS (SWBT) [pb7984@sbc.com]
Sent: Monday, February 12, 2001 11:22 AM
To: gkins@nwol.net
Subject: FW: Point to Point T1

Allen,

I'm so sorry. As I recall I wrote that email very late in the afternoon and two people were trying to talk to me while I was doing it. Let me try to get it right this time.

This new point to point T1 runs from 5000 E University Blvd in Odessa, TX to 500 W Illinois AV in Midland, TX and these are the addresses I have on the actual order. The order number is N080392 and the due date is 2-16-01. The CKT ID is 35.HCGS.606352..SW.

Thanks for your patience. I will be looking for your fax. Let me know if any of the above information is incorrect.

Phil D. Baker
Service Representative ISP Group
Phone: 877 767-9477
Fax: 877 833-2426

-----Original Message-----

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From: Allen Jenkins [mailto:gkins@nwol.net]
<mailto:[mailto:gkins@nwol.net]>
Sent: Monday, February 12, 2001 11:04 AM
To: BAKER, PHIL DOUGLAS (SWBT)
Subject: RE: Point to Point T1

Phil:

I hope the order was not put in with the Williams address. It was supposed to be 500 W Illinois. I will fax you the surcharge exemption form. Please let me know if the order is OK.

-----Original Message-----

From: BAKER, PHIL DOUGLAS (SWBT) [mailto:pb7984@sbc.com]
<mailto:[mailto:pb7984@sbc.com]>
Sent: Friday, February 09, 2001 4:56 PM
To: gkins@nwol.net <mailto:gkins@nwol.net>
Cc: BMTISP
Subject: Point to Point T1

Allen,

The order number for your new T1 between 500 W Williams in Midland and 5000 E University is N080392. The due date for the order is 2-16-01.

A question has been raised about the surcharge exemption. You did not mention it during our conversation but filling out this form and returning it to me will prevent you from being billed an additional 1200.00 per month.

Let me know if you have questions about the form. Since it requires a signature you will need to fax it back to me at 409 839-6884.

<<Surcharge Exept.doc>>

Phil D. Baker

Service Representative ISP Group
Phone: 877 767-9477
Fax: 877 833-2426

From: ram1 [ram1@mail.ev1.net]

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Sent: Wednesday, February 21, 2001 6:44 PM

To: gkins@nwol.net

Subject: SBC

Allen-

When EV1 started we were encouraged by some in the business to use the DRS mechanism. At this point, I'm glad chose not to do it.

There are a couple of new providers that are servicing remote cities (generally smaller towns) back to a central POP or modem bank.

If you'll let me know which cities you refer to, I'll forward you our supplier information.

As for making any difference with SBC, good luck! At every turn where they could screw us or our customers, they have!

Robert Marsh

Everyones Internet

From: Allen Jenkins [gkins@nwol.net]

Sent: Tuesday, February 27, 2001 2:36 PM

To: Keri Vest

Subject: Seminole T1

Keri:

The Seminole circuit is still not up. Do you have a status on it? Please let me know. Thanks!

Allen

NetWest

From: Allen Jenkins [gkins@nwol.net]

Sent: Wednesday, March 14, 2001 10:19 AM

To: Keri Vest

Subject: NetWest Abilene PRI's

Keri:

I am still having trouble with my PRI's going out of service in Abilene. The latest ticket is

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CW251926. The circuit was down for 23 hours. Could you please issue me a credit for this outage and could you order a study on these circuits to find out why they continue to go down during peak times. Thank you!

Allen Jenkins
NetWest

Please let me know what you find out.

From: Allen Jenkins [gkins@nwol.net]
Sent: Friday, April 06, 2001 11:46 AM
To: Keri Vest
Subject: NEED HELP!

Keri:

It has been brought to my attention that I only have two incoming lines. The roll-over is not working and my customers are getting busies. Please help ASAP.

Allen

From: Graham Toal [gtoal@vt.com]
Sent: Monday, April 23, 2001 3:03 PM
To: members@tispa.org
Subject: Re: [TISPA-M] Need facts

One of my customers, a hospital, is getting a new DSL line from us to replace the Vectris one they previously had. SWB installed the new line to a punch down block in their phone room/demarc. However, these guys have something like 100 - 200 such blocks (1000's of lines) and the new DSL line ***WAS NOT TAGGED***. Their was neither a tag on the wire nor anything written on the door of the block.

It took us 3 hours to find the pair. We had to get IP Comms to put a tone on the line at the DSLAM and we went over all those hundreds of wire bundles one wire at a time with a toner probe until we found the right pair.

You know, when a customer reports a line fault on ISDN etc, SWB often tells them that they can't see any problems, and "do you really want us to send a man out, because it will cost an awful lot if it turns out to be your problem!!!!". In these cases the customer calls ***me*** back in rather than SWB - presumably because we're cheaper - and I waste hours proving that it's an SWB fault. Eventually SWB admits the fault and

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fixes it. In that case and the one above, we spend hours doing SWB's work for them.

They're quick enough to charge the customer when it's not an SWB problem, but we don't get to charge SWB when *they* waste *our* time, as they frequently do.

G

From: Graham Toal [gtoal@vt.com]
Sent: Monday, April 23, 2001 4:03 PM
To: wsmc@smccollough.com
Cc: gtoal@vt.com
Subject: Re: [TISPA-M] NEED FACTS underlying anecdotal claims.

The 'untagged pair' story was about Valley Diagnostic Clinic, 2200 Haine Drive, Harklingen TX 78550 Tel 956 421 5099, Contact is Robert Oliva (head of MIS). This happened last Friday.

The most recent instance of a customer having his arm heavily twisted to refuse a SWB on-site check when reporting a faulty ISDN circuit which SWB denied was faulty and pointed at user equipment (a problem which later SWB identified and fixed at the CO) was South Texas Moulding Inc, 5401 N. 10th, STE 101 Mcallen, TX 78572 - local contact Roy Medrano, Jr.

This happened over a period of roughly 6th - 9th April. I'm sure Roy could give you a trouble ticket number for it.

We spent days dicking around because Roy (effectively at SWB's request) wanted me to bring a spare router to his location to eliminate his router as the source of the problem. I didn't have one spare for days and he remained offline because SWB would NOT acknowledge the problem, which was intermittent. They finally fixed it only when it degraded from an intermittent problem to a hard fault.

regards

Graham

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From: Shayla Taylor [shayla1@brazoria.net]
Sent: Wednesday, April 25, 2001 6:12 PM
To: W. Scott McCollough
Subject: SWB Troubles

February 2000 - Loss of Service

I lost my Bay City, Texas, dial in circuit at 12 am February 19, 2000, just as SWB switched over to the new area code (went from 409 to 979, although there was supposed to be a 6 month switch over period where you can use either area code). SWB first told me their database was down, and they would call me back. When I called later in the morning, they told me there was no such number as my dial in number in their system - we eventually found it using the new area code. Then they told me I had a cut line, and they wouldn't repair it until MONDAY the 21st. I asked for the supervisor, to override this time schedule since I needed it NOW (the customers were calling up constantly on my tech support number, and some even reported that SWB said it was my equipment that was the problem), but was told, not until Monday. I called my SWB rep Karen Tuberville at home and she worked on it until late Saturday night (the 19th), but they gave her the same response. We were told that there is no tech available for repairs in Bay City on weekends, even for 24 hour business service.

I noted that the message that the customers got was "This line has been disconnected or is no longer in service", which is not the symptom of a cut line. My SWB rep agreed and managed to talk to some more knowledgeable people at SWB on Sunday, and there was evidently a similar problem somewhere else. It was clear to my rep that there was a problem with the upgrade to the new area code, so SWB continued working on that. My line was finally back in service around 8 pm on Sunday the 20th.

May 2000 - Loss of Service

May 3, 2000 (Wednesday) my Galveston dial in number was out of service. I checked the disaster routing, and it was okay. The only thing I noted was that the Bay City dial in number (on same "Group Number") was forwarded to 979 237 0012 and Galveston was forwarded to 409 237 0012. NOTE DIFFERENT AREA CODE! Both 979 237 0012 and

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409 237 0012 work if dialed directly.

I called SWB repair, and they told me they would fix the line by SUNDAY the 7th. This was the earliest they could get to it. They would not give me a trouble ticket number; they said to just reference the phone number if we called to check on it. I gave the office number as our contact number, since they said they would only call back during business hours.

November 2000 - Loss of Service

Starting November 9, through November 14th, we received a high number of calls from customers with 979-265-xxxx telephone numbers, due to poor connections or no connections. We were not the only ISP to have problems receiving calls from this exchange.

March 2001 - Loss of Service

Our Glaveston dial in number was out of service 24 March (Saturday) to 27 March (Tuesday). I talked to "Reeal" in repair, but SWB did not give me a ticket number. I left a message for my SWB rep on Monday the 26th, but never did hear what the problem was.

Shayla Taylor
Brazoria Dot Net, Inc.
www.brazoria.net
(979) 285-0000

From: T. Green [bishop@totalaccess.net]
Sent: Wednesday, April 25, 2001 9:48 AM
To: W. Scott McCollough
Subject: Re: [TISPA-M] Last chance to gripe

Well I can go on and on but here is a prime example of the doffus stuff: In October we ordered a T1 to inter connect our Data Center to the COLO facility in Austin. We of course needed the order expedited and had to pay out the nose. The circuit install bell says was no problem. We called every engineer under the sun on this one. The system was plugged up hot, but not to our rack/gear. SWB had mismarked the circuit and plugged it into the data centers switches instead of our own.

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This would not have been a problem, but they took 60 plus days to figure this out, then screamed it was the data centers fault. They still as of to my knowledge today, refused to own up to their inadequate service and pay the service fees, because that would mean owning up to the mistake. We even have records from the data center proving it was SWB that mismarked the thing to begin with.

The issue took SWB till December to figure out. and then they argued that it was not their responsibility. They claim it was the NOCs responsibility we should speak with them. So we did and had them pull their actual records and found SWB at fault. if they can force blame, they do and they get away with what ever crappy service they can, because they are bell. Pure simple and factual.

We recently had other service losses again directly related to SWB. This time they claim that the trunks for DR were damaged and they would get them fixed as soon as possible. Did they compensate? Did they fix it when they promised? Nope. It was broke of course Friday evening and was not fixed till yesterday afternoon/ early evening.

You try to get the reps, and they are never in. You scream "hey I need this done and fixed I pay for this", and they say sorry the systems down for a few hours, call back.

Like that would do anything?!?

From: Robert Fournierat [robert@netin.com]
Sent: Wednesday, April 25, 2001 11:01 PM
To: W. Scott McCollough
Cc: TISPA Members List
Subject: Re: [TISPA-M] Last chance to gripe

Briefly, my main problems with SWB include:

- 1) Extended, never ending billing problems. Ie T1 and T3 circuits where the invoices never match the quotes (and I'm not talking about all the bogus taxes). I don't know how many times we've given them our tax ID, yet they still try to charge us sales tax. Etc.

- 2) ASI/SWB have untrained support people.
- 3) ASI/SWB is unconscionably slow to change DSL customers ISP from ASI to us.
- 4) ASI/SWB sales people misleading DSL customers or misunderstand their own DSL services (ie: deceptive sales and marketing).
- 5) And isn't any Gov't group interested in how SWB/ASI have has been selling DSL at incredibly low prices, how a large DSL provider like Northpoint goes out of business, and within a week, ASI/SWB raise their DSL prices????

thanks,
Robert

Attachment 2

TISPA-SBC Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into this the ____ day of June, 2000 by and between the Texas Internet Service Providers Associations, for and on behalf of its members (“TISPA”) and SBC Operations, Inc., SBC Advanced Solutions, Inc. and Southwestern Bell Telephone Company (“SBC”), hereinafter sometimes collectively referred to as the “Parties”.

Recitals

WHEREAS, SBC offers advanced telecommunications services, including digital subscriber line service (“DSL”) and traditional services for sale to the public;

WHEREAS, Internet Service Providers (“ISPs”) and end users purchase telecommunications services, including both traditional and advanced telecommunications services, from carriers to provide or use enhanced or information services;

WHEREAS, SBC created a sales representative program for ISPs to sell SBC DSL service (the “Partnership Program”);

WHEREAS, SBC provides the processes, systems and personnel necessary to determine the availability of SBC’s DSL service to particular end users, the process for ordering of SBC’s DSL and performs the installation and provisioning SBC’s DSL service;

WHEREAS, affiliates of SBC provide enhanced or information services, including Internet access, to end user customers;

WHEREAS, TISPA represents numerous ISPs from throughout the state of Texas, including some ISPs who purchase and/or sell SBC DSL and/or participate in the Partnership Program;

WHEREAS, TISPA has presented to the Public Utility Commission of the State of Texas (“TPUC”), the Federal Communications Commission (“FCC”) and the Commerce Committee of the U.S. House of Representatives (“Commerce Committee”) numerous complaints regarding practices, actions and pricing terms that it believes to be unlawful, regarding *inter alia*, the manner in which SBC prices DSL to ISPs, provides DSL qualification processes, obtains DSL orders, installs DSL service, markets SBC’s enhanced and information services, and implements the Partnership Program, and other issues with regard to provision of and access to traditional telecommunications services;

WHEREAS, SBC denies the validity of such complaints; and

WHEREAS, SBC and TISPA desire to resolve the disputed matters between SBC and TISPA and significantly improve the relationship between SBC and all ISPs;

NOW, THEREFORE, in consideration of promises and mutual covenants contained herein, and for the mutual benefits to be derived from this Agreement, the Parties hereby agree as follows:

I.
Confidentiality

- 1.1 Except as mutually agreed to in writing by the Parties, the matters set forth herein shall be kept confidential and shall not be disclosed outside the Parties' respective entities except as required by law; provided, however, the substance of the terms of this Agreement may be informally disclosed to the FCC and TPUC on mutually agreeable terms.

II.
Definitions

- 2.1 For purposes of this Agreement, the below terms shall have the following meanings:
- 2.1.1 "Advanced services" shall mean intrastate or interstate wireline telecommunications services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an SBC Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include (1) data services that are not primarily based on packetized technology, such as ISDN, (2) x.25-based and x.75-based packet technologies, or (3) circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.
- 2.1.2 "Another ISP" shall be deemed to include all other ISPs, including any Internet service operations Affiliate of SBC.
- 2.1.3 "Affiliates" shall mean companies with common majority ownership or effective control. For purposes of this agreement only, Prodigy Communications Corporation, and any enhanced or information service

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

provider in which SBC directly or indirectly owns or controls five per cent (5%) or more of the voting shares shall be deemed affiliates of SBC.

2.1.4 “ASI” shall mean SBC Advanced Solutions, Inc.

2.1.7 “DSL” shall mean Digital Subscriber Line service, including but not limited to Asynchronous Digital Subscriber Line (“ADSL”) service.

2.1.8 “Enhanced service” shall be as defined in 47 C.F.R. § 64.702 of the FCC’s rules.

2.1.9 “FCC” shall mean the Federal Communications Commission.

2.1.10 “Information service” shall be as defined in § 153(20) of the federal Telecommunications Act of 1996.

2.1.11 “ISP” shall mean Internet Service Provider, regardless of whether such ISP is a Partnership Program participant.

2.1.12 “Partnership Program” shall mean Southwestern Bell Telephone Company’s DSL Partnership, sometimes referred to as the ISP Partnership Program, and any future alternate sales channel program, regardless of the name that may be attached, made available to ISPs for the purpose of facilitating sales of SBC DSL service, pursuant to which ISPs have the opportunity to earn commissions for sales of DSL and other data products.

2.1.13 “Subsidiaries” shall mean legal entities in which a Party owns a majority share.

2.1.14 “SBC” shall mean SBC Operations, Inc., Southwestern Bell Telephone Company, SBC Advanced Solutions, Inc., any other persons, firms, partnerships, corporations, or other affiliated legal entit(ies) that interact with enhanced or information service providers on behalf of SBC or manage SBC’s relationship(s) with enhanced or information service providers, and their affiliates, subsidiaries, representatives, agents, servants, officers, directors, attorneys and successors.

2.1.15 “SWBT” shall mean Southwestern Bell Telephone Company.

2.1.16 “Telecommunications service” is as defined in § 153(46) of the federal Telecommunications Act of 1996, and includes both advanced and traditional telecommunications services.

- 2.1.17 “TISPA” shall mean the Texas Internet Service Providers Association, its member companies (both collectively and individually), representatives, agents, servants, officers, directors, attorneys, successors and assigns of any of the foregoing, and any other persons, firms, partnerships, corporations, or other legal entity for which the Texas Internet Service Providers may be legally responsible or who may be responsible for the acts of the Texas Internet Service Providers.
- 2.1.18 “TISPA Complaints” shall mean and refer to the matters made the subject of TISPA’s Reply Comments to FCC Docket No. 00-4 dated February 22, 2000, as well as any other complaints presented by TISPA on behalf of its members in advance of this settlement, including but not limited to the compilation dated April 19, 2000, which reflects that it was provided to the TPUC and the House Commerce committee “as a source of information,” and the summary of TISPA concerns, dated March 13, 2000, which was provided by TISPA to SBC during the initial meetings between the Parties regarding these matters.
- 2.1.19 “TPUC” shall mean the Texas Public Utilities Commission.
- 2.1.20 “Traditional telecommunications service” shall mean all telecommunications services that are not Advanced services, including, but not limited to analog and digital services such as ISDN.

III.

SBC Commitments

3.1 Nondiscrimination:

- 3.1.1 Consistent with its obligations under federal and state tariffs, rules and regulations, SBC shall provide all ISPs with nondiscriminatory access to DSL qualification information, network deployment information, and ordering information. SBC shall not unfairly discriminate in the processing of orders, or provisioning of advanced services. SBC shall also comply with all federal and state nondiscrimination, provisioning, availability and pricing requirements pertaining to advanced or traditional telecommunications services to the extent such requirements apply.

3.2 Communications:

- 3.2.1 SBC agrees that on an ongoing basis, it will maintain a toll-free telephone

number and other input channels to receive ISP issues and concerns with respect to their dealings with SBC and will provide dedicated staffing to address these issues and concerns.

- 3.2.2 SBC agrees to provide monthly updates to TISPA and Partnership Program participants, and meet with TISPA representatives, at the times and locations mutually agreed to by the Parties, to discuss ISP issues and provide information regarding SBC services, corporate structure and other issues which SBC in good faith believes may affect telecommunications services provided to or for ISPs in Texas, including but not limited to anticipated regulatory filings and legislative actions. The purpose of these updates is, to the best of SBC's belief, to fully inform ISPs of information and services available to them under federal and state statutes, rules, programs, policies and tariffs.
- 3.2.3 SBC and TISPA will cooperate to informally and actively address and resolve complaints raised by one Party about the actions of the other Party, and will engage in constructive planning, outreach and market development to better benefit the public interest, communities and consumers. The goal is to promptly identify areas of potential conflict and to resolve such issues without the need of divisive and costly legislative, regulatory or judicial intervention. To implement the cooperative endeavor, each Party shall name a specific individual that one Party may directly contact to initiate discussions. Each Party shall also nominate, in advance, a group of individuals authorized to meet, negotiate, isolate and preliminarily resolve matters by taking interim action while each Party obtains authority to implement a permanent solution acceptable to both Parties. SBC and TISPA commit to invoke the mechanism of the cooperative endeavor when either believes in good faith that a proposal it intends to make for legislation, or regulatory or judicial action, or other action in the telecommunications services markets, may adversely and materially affect the legal rights, duties or obligations of the other Party. Except as otherwise stated in this Agreement, nothing herein shall be construed to require either party to notify the other in advance of anticipated requests for legislative, regulatory or judicial action that said party believes in good faith do not materially and adversely affect the other.

3.3 Dispute Resolution:

- 3.3.1 SBC shall establish an "Ombudsman Program" or other dispute resolution program to receive complaints from individual ISPs and to deal with them in an expedited and reasonable fashion.

- 3.3.2 Within the Partnership Program, SBC shall establish a dispute resolution procedure that will allow for expedited, neutral resolution to conflicts arising out of the Partnership Program agreement.

3.4 ISP Marketing:

Unless otherwise consented to in writing by an ISP:

- 3.4.1.1 SBC shall not use information provided to it by an ISP to solicit sales of Another ISP's service, subject to the following limitations: This Agreement imposes no obligation upon SBC with respect to information which (a) was in the possession of SBC without restriction before receipt from the ISP; (b) is or becomes a matter of public knowledge through no fault of SBC; (c) is rightfully received by SBC from a third party without a duty of confidentiality; (d) is disclosed by the ISP to a third party without a duty of confidentiality on the third party; (e) is independently developed by SBC; (f) is disclosed by SBC with the ISP's prior written approval; or (g) is disclosed to SBC or may be used by SBC with the consent of the end-user customer to which the information applies. This provision is not intended to permit SBC to obtain permission to use the restricted information after the use is made.
- 3.4.1.2 SBC agrees that, upon request by an ISP, SBC shall provide such customer information derived from SWBT network databases as may be useful to the marketing of ISP or DSL services where such disclosure is permitted by law and applicable regulation. SBC reserves the right to assess to that ISP a reasonable charge for the collection and provision of such information.
- 3.4.2 SBC shall establish a group of service representatives who will be responsible for interacting with nonaffiliated ISPs and their customers regarding orders and order status and who shall not solicit the sale of Another ISP's service while performing such interactions. SBC shall ensure that business methods and procedures exist that must be followed by this group prohibiting such solicitation, the violation of which will result in discipline, up to and including dismissal.
- 3.4.3 SBC shall establish methods and procedures for SBC technicians installing DSL services for an ISP, whether an SBC employee or contracted installer, (i) which prohibits the disparagement of an ISP's service; (ii) which prohibits sale or promotion of Another ISP or ISP services while installing

DSL service for such ISP; and (iii) which prohibits the SBC technicians from installing, or offering to install, computer software used by the affiliated ISP. The violation of these methods and procedures shall result in disciplinary action, up to and including dismissal of the employee or termination of the contracted installer. Nothing in this Agreement shall preclude the SBC technician from providing information to the customer pertaining to Another ISP service when such information is provided in response to a specific inquiry initiated by the customer. The parties agree to negotiate in good faith to develop even-handed guidelines pertaining to the provision of information as set forth in the preceding sentence.

- 3.4.4 SBC shall establish methods and procedures for employees, agents and contractors who are responsible for receiving or disposing of trouble inquiries (i) which prohibit the disparagement of an ISP's service, and (ii) which prohibit the sale or promotion of the affiliated ISP's service. The violation of these methods and procedures shall result in disciplinary action, up to and including dismissal of the employee. Nothing in this Agreement shall preclude the employee, agent or contractor from referring the customer to the affiliated ISP in response to a specific inquiry initiated by the customer about the affiliated ISP's service.

3.5 Volume Aggregation Program

- 3.5.1 SBC will allow ISPs to aggregate their individual purchase volumes of DSL via ordering or purchase by one or more legal entit(ies) ("the Aggregating Entit(ies)") so as to allow such ISPs to take advantage of volume discount pricing. Such aggregate purchasing shall be known herein as "the Volume Aggregation Program". Individual ISPs in the Volume Aggregation Program are not eligible for participation in the Partnership Program. The Aggregating Entit(ies) shall be treated as any other ISP and therefore shall be subject to all restrictions and eligible for all benefits of any programs available to other similarly situated ISPs. The Aggregating Entit(ies) shall be responsible for the administration of all billing and collection arrangements among the participating ISPs, including but not limited to acquisition of necessary financial commitments. It is agreed and understood, however, that SBC retains reasonable discretion to determine the financial viability of the Aggregating Entit(ies) to meet any potential shortfall liabilities, as well as other relevant and commercially reasonable factors bearing on the viability of any such relationship. It is further understood and agreed that such aggregation will be conditioned upon the offer by the Aggregating Entit(ies) of commercially reasonable, reliable assurances of ability to pay and otherwise

to meet such contractual obligations in full as are imposed by volume discount contracts offered to ISPs individually, including but not limited to requirement of the creation of a single purchasing and billing entity.

3.5.2 SBC shall make available to the Aggregating Entit(ies) the purchase of DSL on reasonably nondiscriminatory terms and conditions. Prior to January 1, 2002, if SBC's standard pricing for its affiliated ISP changes, , then SBC shall notify the Aggregating Entit(ies) of such change(s) and shall make proportionally similar terms and conditions available to the Aggregating Entit(ies). After that date, if SBC changes its standard pricing for its affiliated ISP, the Parties agree that they will negotiate in good faith to create appropriate pricing for the Aggregating Entiti(ies).

3.5.3 Notwithstanding anything to the contrary herein, this Agreement shall not preclude other arrangements between the Parties that provide for aggregation of orders for purposes of meeting volume commitments but involve billing to and payment responsibility by individual ISPs, nor shall this paragraph be construed as a commitment by SBC to enter into such arrangements.

3.6 OSS. To the extent technically feasible, unaffiliated ISPs shall be provided access to an order entry system to electronically process orders for SBC's DSL service, which is intended to include flow-through of such orders. The parties disagree whether economic feasibility is a relevant factor in determining technical feasibility.

During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA regarding the details of such order entry system.

If the Parties cannot reach agreement on the details during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days.

3.7 DSL Qualification Process:

3.7.1 SBC shall maintain and monitor all systems currently utilized, or which may be developed in the future, to ensure that information provided by any ISP associated with the verification of DSL qualification is not made available to another ISP. SBC will continue to work with ISPs to develop systems, methods and procedures to expedite and make information regarding deployment or availability of SBC DSL service to end users more readily accessible to ISPs and the Aggregating Entit(ies).

3.8 Ordering Process

3.8.1 SBC will provide a system to ISPs and the Aggregating Entit(ies) whereby the

virtual path and virtual connection information necessary to process DSL orders is automatically provided in the ordering process. Said system shall be designed so as to permit ISPs and the Aggregating Entit(ies) to provide input and changes to such information, subject to the limitations of the system's design and considerations of economic efficiency. SBC further agrees to provide a reasonable amount of training to ISPs and the Aggregating Entit(ies) on how to use such system.

3.9 Partnership Program:

3.9.1 Partnership Agreement:

3.9.1.1 SBC agrees to consult with ISPs and continue working with an outside consulting firm to redesign and restructure the Partnership Program. Nothing contained herein, however, shall be construed in any way as an obligation on the part of SBC to continue the Partnership Program. SBC may, at any time at its sole discretion, terminate the Partnership Program and any agreements thereunder, in accordance with the Partnership Program agreements.

3.9.1.2 Immediately upon the execution of this Agreement and until August 1, 2000, in exchange for a release of any claims which may have arisen out of the entering into, administration and/or terms of the Partnership Program agreement, any current participant in the Partnership Program may terminate their Partnership Program contract without incurring any penalties or other liability that may otherwise have been provided for under the Partnership Program agreement.

3.9.2 ATM Connectivity:

3.9.2.1 In exchange for a release of any and all claims that may have arisen out of the entering into or the administration of the Partnership Program agreement, for a period of 90 days from execution of this Agreement, SBC will agree to allow any Partnership Program participant to terminate its existing ATM connection contract without incurring early termination fees. In the event the participant contemporaneously enters into an alternative ATM connection agreement with SBC (minimum of DS1 capacity), any fees associated with the institution of such new connection shall be waived. In the event the participant does not enter into an alternative agreement for ATM connectivity with SBC contemporaneously with the termination of their current

ATM connection contract, standard reconnection and installation fees will apply. SBC reserves the right to limit participation in the Partnership Program to those ISPs that have acquired and continue to maintain ATM connectivity with SBC. Unless otherwise negotiated between the ISP and SBC, all amounts previously charged for ATM connection service in accordance with that agreement will remain due and payable and the ISP shall remain responsible for all services up to the time of termination. SBC agrees to review the situation of each Partnership Program participant to make that ISP whole for charges paid for the unused capacity previously contracted, up to a maximum credit for ten (10) months of the difference between the current and prior capacity charges. SBC commits to attempt to resolve all such claims in an equitable manner, taking into account *inter alia* that ISP's usage in each of the prior months.

3.9.3 DSL Pricing:

3.9.3.1 From the effective date of this agreement until the SBC Broadband Capabilities Gateway ("BCG") is available to ISPs, SBC shall make DSL service available to customers of members of the Partnership Program who purchase a one-year DSL service arrangement for a price of \$36 per line. (As used in this clause, "DSL" is limited to service featuring downstream speed of 384 kbps to 1.5 mbps, and 128 kbps upstream.) Said prices shall apply whether the customer's service is a new service request or a renewal of a one-year contract. All other fees and expense will still apply, including early termination fees.

3.9.3.2.1 For participants in the Partnership Program that commit to using SBC's BCG, beginning August 1, 2000, SBC will make available the following interim pricing: (a) \$32 per one-year DSL service arrangement, where the ISP uses or commits to more than 1 and fewer than 500 total DSL service arrangements; (b) \$30 per DSL service arrangement if the ISP commits to 500 or more DSL service arrangements.

3.9.3.2.2 When SBC's Broadband Capabilities Gateway ("BCG") is made available to ISPs, and the program is completely explained to the ISP community, each

ISP shall decide whether to commit to utilizing the BCG. The BCG will enable SBC to make different pricing for DSL available, depending upon the speed of the service requested, the commitment to utilize the BCG, and the volume of annual DSL sales to which an ISP is willing to commit. SBC shall endeavor to complete the BCG by early fourth quarter 2000, but makes no representations regarding the actual date of availability. If the ISP chooses not to utilize the BCG at the time it is offered, the interim prices offered pursuant to 3.9.3.2 above shall no longer apply to that ISP. If SBC makes price changes to its DSL product prior to the availability of the BCG, SBC agrees to renegotiate the pricing agreed to herein.

3.9.3.3 Notwithstanding anything to the contrary herein, SBC agrees that all non-SBC separated, integrated or affiliated ISPs, including any ISP signatories to this agreement, retain all of their rights under state and federal law and regulation as it pertains to enhanced or information services, including but not limited to those rights, duties and obligations resulting from the federal Telecommunications Act of 1996, Open Network Architecture and Comparably Efficient Interconnection and the *Computer Inquiry* series of decisions by the FCC, the Public Utility Regulatory Act and rules promulgated by the TPUC.

3.9.4 Commissions and Sales Awards:

3.9.4.1 Until August 1, 2000, participants in the Partnership Program will continue to earn double their contractual commissions for DSL sales, at which time commissions will return to the contractually agreed upon rate.

3.9.4.2 Until August 1, 2000, participants in the Partnership Program will continue to receive a bounty of \$175 per installed DSL line.

3.9.4.3 SBC agrees to provide commissions and bounties to participants in the Partnership Program as appropriate and indicated by market conditions.

3.10 LATA-wide calling capability for traditional telecommunications service customers:

3.10.1 During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA the development of a service that allows an ISP to collect telecommunications service calls from customers throughout a calling scope to a single point of presence in a LATA without using SBC's managed modems or subscribing to frame relay or ATM service, and free of toll charges. Said offering shall be designed to enhance the availability of Internet access in rural areas. If the Parties cannot reach agreement on the service offering during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days. Thereafter, TISPA is free to exercise such rights as it may have to initiate a proceeding to investigate the propriety of such an offering.

3.11 ISDN-PRI calling scope and construction charges:

3.11.1 During the ninety (90) days following execution of this Agreement, SBC agrees to negotiate in good faith with TISPA aspects of SBC's ISDN-PRI service that would allow an ISP to choose between the calling scope associated with the rate center in which the serving switch is located and the calling scope associated with the rate center in which the purchaser is located. SBC also shall negotiate in good faith with TISPA the applicability of special construction charges pursuant to Section 9 of its Texas General Exchange Tariff on a customer requesting ISDN-PRI service. If the Parties cannot reach agreement on these changes during this time period, they may agree to extend their negotiations for a period not to exceed an additional ninety (90) days. Thereafter, TISPA is free to exercise such rights as it may have to initiate a proceeding to investigate the propriety of such an offering.

3.11.2 Seamless transfer of customer's choice of ISP provider. The Parties agree to negotiate in good faith for the next ninety (90) days a process that will facilitate transfer of serving ISP from one provider to another at the end-user customer's choice and minimize disruption of ISP service to the end-user customer. If the Parties cannot reach agreement on such a process

within 90 days, they may agree to extend their negotiations for a period not to exceed an additional ninety days.

3.12 Membership in TISPA:

- 3.12.1 SBC shall become a member of TISPA for at least three years. The initial membership fee good for two years shall be \$110,000.00 for SBC and its ISP affiliate(s). SBC's third-year membership fee shall be the amount applicable to "national level" members.

IV.

TISPA Commitments

4.1 Regulatory Complaints:

- 4.1.1 TISPA agrees that upon execution of this Agreement, that it shall cease its pursuit of formal investigation of the TISPA Complaints by the TPUC, FCC, House Commerce committee and any other legislative, regulatory or governmental entity (including but not limited to requests to attorneys' general, the Federal Trade Commission, the U.S. Department of Justice, or other antitrust enforcement agencies). TISPA further agrees that it shall notify said entities that it wishes to withdraw such request for investigation and that no further need for such investigation exists. TISPA and each of its member companies shall not recommence any such pursuit unless and until a determination is made under the provisions of Section 5.3 below that SBC has materially breached the terms of this Agreement. TISPA retains any and all rights it may have to seek judicial or administrative enforcement of this agreement, including damages where applicable.

4.2 Press Release:

- 4.2.1 TISPA agrees, upon the execution of this Agreement, to participate with SBC in a joint press release, as mutually agreed to by the Parties, reflecting the resolution of this dispute and optimistic prospects of the Parties' relationship.

4.3 Membership Education:

- 4.3.1 TISPA agrees, to the extent information is provided to TISPA by SBC, to keep its membership informed and provide SBC the opportunity to meet with its membership to inform and instruct them regarding services available from

SBC, the proper procedures for ordering services and following up on orders on behalf of customers, how to obtain additional information regarding SBC services, and how to utilize the procedures for addressing concerns and complaints, including the toll free complaint line and seeking intervention of the Ombudsman.

4.4 Incident Reports:

4.4.1 TISPA agrees to assist SBC in the investigation of incidents of allegedly inappropriate actions by SBC employees, by providing current, accurate information regarding such incidents, so that SBC can conduct an appropriate investigation and issue appropriate corrective measures.

4.5 Continued Negotiation:

4.5.1 The Parties agree to continue to negotiate in good faith regarding those matters which were raised by TISPA in its complaints to the TPUC and FCC but which were not addressed herein, and to work cooperatively in finding solutions to these issues.

4.6 Continued Cooperation:

This Agreement is intended to implement, not frustrate, federal and state law and regulatory policy. The Parties' intention is to establish and maintain policies and practices for greatly improved communication and cooperation to avoid disputes unrelated to the legitimate operation of the marketplace and to find areas where the Parties may legitimately work together to avoid conflict and advance the public interest in making telecommunications services available to Texas citizens. Nothing in this agreement shall require any Party to take any action that may expose such Party to liability to any other entity for actions taken pursuant to this Agreement.

V.

General Provisions

5.1 Jurisdiction:

5.1.1 The Parties agree that nothing contained herein should in any way be construed as an acknowledgment of Texas Public Utility Commission authority or jurisdiction over enhanced or information service pricing or any other matter raised and resolved hereby; nor has either Party waived any

jurisdictional arguments it may have or have had regarding these matters.

5.2 Liability:

5.2.1 It is expressly understood and stipulated by the Parties, that this is a compromise agreement and not an admission of liability. SBC is entering into this Agreement to improve its relationships with ISPs and to avoid further inconvenience and expense. SBC denies any liability and all allegations in the TISPA Complaints, including, but not limited to, claims, allegations and causes of action for breach of contract, breach of the duty of good faith and fair dealing, and antitrust violations, as well as any other allegations set forth in or implied by the TISPA Complaints. By executing this Agreement, TISPA does not concede that the DSL pricing herein constitutes just and reasonable rates for those services.

5.3 Dispute Resolution

5.3.1 In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is connected with or related in any way to this Agreement or any right, duty or obligation arising herefrom or the relationship of the Parties hereunder (a "Dispute or Controversy"), the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement as part of the cooperative endeavor described in Paragraph 3.2.3. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other that it has elected to implement the procedures set forth in this Section. Within fifteen (15) days after delivery of any such notice by one Party to the other regarding a Dispute or Controversy, the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at such meeting or should no such meeting take place within such fifteen (15) day period, then either Party may by notice to the other Party submit the Dispute or Controversy for independent determination in accordance with Section 5.3.2 below.

5.3.2 Each Party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of Section 5.3.1 shall be submitted in good faith to non-binding confidential commercial mediation under the auspices of J.A.M.S./Endispute (or similar entity) for a period of at least sixty (60) days. Such mediation shall occur at a mutually convenient location. If mediation fails to resolve said dispute, the Parties shall be free to pursue any other legal or regulatory procedure they deem appropriate, subject to any and all

jurisdictional challenges and other rights and defenses thereto; provided however, that disputes regarding prices to result from negotiations pursuant to Paragraphs 3.6, 3.10 and 3.11 (with all its subparagraphs) shall not be submitted to mediation. Notwithstanding this exception, the Parties retain all rights and remedies otherwise available to them by law with respect to such matters. Notwithstanding any statute or rules to the contrary, any Party that substantially prevails in a claim against the other Party is entitled to recover all costs of bringing the complaint (including attorneys fees, mediation fees and expert witness costs) from the other Party, whether such services are provided by in-house counsel or outside counsel.

5.4 General Provisions

5.4.1 Entire Agreement This Agreement constitutes the entire agreement between the Parties and shall not be modified, altered, or discharged except by a writing signed by each of the Parties to the Agreement.

5.4.2 Governing Law This Agreement is made and shall be enforced pursuant to the laws of Texas. Venue for any proceeding relating to the alleged breach of this Agreement shall be in Travis County, Texas.

5.4.3 Validity of Provisions The Parties agree that should any part of this Agreement be found to be void, that determination will not affect the remainder of the Agreement.

5.4.4 Use of Agreement The Parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the Parties allege a breach of this Agreement or as a complete defense to any lawsuit brought by either Party. Other than this exception, the Parties agree that they will not introduce this Agreement as evidence in any proceeding or in any lawsuit.

5.5 The Parties agree that this Agreement and all obligations imposed therein shall expire at midnight on June 12, 2003 unless extended or otherwise modified in duration by a writing signed by both Parties.

EXECUTED this ____ day of _____, 2000.

David Robertson, President, Texas Internet
Service Providers' Association

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

David R. Lopez, President--Texas, SBC
Operations, Inc.

Keith Epstein, Vice President and General
Counsel-SBC Advanced Solutions, Inc.

Attachment 3

VPOP Materials

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

X-From_: jb8793@sbc.com Tue Mar 20 20:37:25 2001
Delivered-To: ldvhomeu@mail.texoma.net
From: "BAUSONE, JENNIFER N (SWBT)" <jb8793@sbc.com>
To: "Larry Vaden" <vaden@texoma.net>
Cc: "MCCOY, GARY D (SWBT)" <gm3789@sbc.com>
Subject: RE: SWBell Information
Date: Tue, 20 Mar 2001 20:37:03 -0600
Importance: high
X-Mailer: Internet Mail Service (5.5.2653.19)

Hello Larry,

I am attaching the pricing information that you requested as well as other additional information.

- + The VPOP DAS solution is NOT a lata wide service, however, it is a Metro service.
- + At this time we are unable to find any information that suggests that Southwestern Bell supports a 976 type service.
- + In regards to how many lines are on a shelf: 1344
- + 1800 service rates, please read the attachment on high vol calling plans. Southwestern Bell bases the long distance rates on total billed revenue brackets. I know that you said that your usage is in the millions of minutes. However, we can start with the \$5,000 monthly commitment revenue. If you exceed this amt. then we will have some information to base a special construction case to possibly obtain better rates.
- + In regards to the ADSL option to your customers with your company as the internet provider and SWB providing the DSL line, I am still researching. I will provide you with this information soon.

I believe that this is all of the information that you requested, I will get back to you soon with any missing pieces. If you have any questions please email myself or Gary McCoy. I will be out of the office most of the day on Wednesday, the 21st. I hope that all is going well!

Thank you,

J. Nicole Bausone
Acct. Manager
214-571-7331

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

VPOP DAS Metro Calling Monthly Pricing								
Minimum volume		Flat Rate Three- Year		Flat Rate Four-Year		Flat Rate Five Year		
Per 24 Port Group	Port	Per 24 Port Group	er Port	Per 24 Port Group	er Port	Per 24 Port Group	er Port	
1	24	768	\$ 32	744	\$ 31	720	\$ 30	\$
2-5	48- 120	744	\$ 31	720	\$ 30	696	\$ 29	\$
6-17	144- 408	720	\$ 30	696	\$ 29	672	\$ 28	\$
18- 53	432- 1,272	696	\$ 29	672	\$ 28	648	\$ 27	\$
54- 161	1,29 6-3,864	672	\$ 28	648	\$ 27	624	\$ 26	\$
162- 485	3,88 8-11,640	648	\$ 27	624	\$ 26	600	\$ 25	\$
486- 971	11,6 64-23,304	624	\$ 26	600	\$ 25	576	\$ 24	\$
972- 1,457	23,3 28-34,968	576	\$ 24	552	\$ 23	528	\$ 22	\$
>1,4 57	>46, 632	528	\$ 22	504	\$ 21	480	\$ 20	\$

*Pricing does not include taxes.

*VPOP DAS is a METRO service only and is not lata wide.

Pricing includes the following components:

Telephone number (one telephone number per calling scope area or five telephone numbers per VPOP, whichever is higher) Additional telephone numbers may be requested for a fee of \$3 per telephone number

VPOP-DAS modem port

PVCs (As the network expands the customer will need at least one PVC to each modem shelf in the NAS).

Not included:

Frame or Cell Relay UNI

Complimentary carrier solution pricing not included in above pricing. Installation charges do not apply to initial VPOP DAS port installation and growth within the first year of a three-year contract, two years of a four-year contract, and three years of a five-year contract. Beyond that, port installation charges are \$1,000 per 24 ports and must be ordered in increments of 24.

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

ATM Cell Relay Service

Structure and Pricing-Interstate

Version 6.0

29-Jan-01

	Month-M	Install	3	Install	5	In
ATM UNI DS3- 21 to 40Mb	\$4,2	\$3,000	\$	\$1,500	\$3	\$0
ATM GI DS3- 21 to 40Mb	\$2,1	\$3,000	\$	\$1,500	\$1	\$0
Additional VCCs	\$18	\$60	N/	N/A	N/	N/
Additional VPCs	\$28	\$60	N/	N/A	N/	N/

*Pricing does not include taxes.

ATM UNI DS3 – 21 to 40MB pricing includes a total Southwestern Bell loop connection.

ATM GI DS3 - 21 to 40MB pricing includes only the Southwestern Bell meet point portion and not the GTE meet point loop portion. We are working on getting the GTE billing portion as well, however, it will take a little more time.

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

From: David Robertson [robertson@stic.net]
Sent: Monday, April 30, 2001 9:49 AM
To: 'Scott McCollough'
Subject: STIC.Net VPOP

STIC.Net uses SBC's VPOP product to collect calls from 36 towns and cities in the San Antonio LATA. There are 12 different phone numbers users that live outside of the San Antonio metro area may call without incurring a toll charge. All the traffic is delivered to STIC.Net's POP in San Antonio.

The service was turned up beginning 4/27/2001.

STIC.Net's VPOP service is rendered pursuant to a contract with Southwestern Bell Telephone Company, not SBC-ASI.

Attachment 4

ISDN Not Available Statewide

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

From: Graham Toal [gtoal@vt.com]
Sent: Tuesday, October 03, 2000 4:05 PM
To: Scott McCollough
Cc: support@admin.vt.com
Subject: Re: ISDN refusals - more info

Hidalgo County Computer Department (they handle the courts) has today been turned down for an ISDN line in Elsa ('wait until the end of the year' they said). I am currently encouraging him to ask for the refusal in writing and will get him to submit the complaint to the PUC. I said if he can't get it in writing, get the name of the person who told him instead.

FYI I *did* get the ISDN line I ordered for someone in McAllen. So there is no shortage of lines. It's not even a backhaul - McAllen is where an Elsa line would be connected anyway...

G

From: Graham Toal [gtoal@vt.com]
Sent: Tuesday, October 31, 2000 11:27 AM
To: Scott McCollough
Cc: gtoal@vt.com
Subject: RE: ISDN denials

I mentioned that Hidalgo County computer department/law courts tried to order ISDN for Elsa, Texas. They were denied. At my request, they asked for the denial in writing (talked to Becky Briones and Juanita Soliz). Although they were told they would get it, nothing ever turned up.

Graham

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

Dave, Scott & Gene,

I thought I would take a moment and update you on my push with the PUC on SW Bell not delivering ISDN in our area. Bell has Admitted to the PUC that they closed our CO on July 25th to ISDN orders. They also stated that ISDN would not be available until approx. Nov. 28th. I informed the Investigator with the PUC that this was a state wide issue and not just a local one. I gave her numerous other instances where bell had closed their CO to ISDN. She will be requesting from bell a listing of all Texas Co's and a status of ISDN in each of those CO's. along with a request for the approx delays that it has taken to deliver these services.

I will forward more info as I push this further.

Trent Stricker
NetsCorp

From: Graham Toal [gtoal@vt.com]
Sent: Monday, November 27, 2000 3:39 PM
To: Scott McCollough
Cc: gtoal@vt.com
Subject: RE: ISDN denials

When Bell refused Ron Stamper ISDN they told him it would change at the end of the year when their new equipment/build out was done. So since it is getting close to that time, I suggested to him that he call them now and get his order in first.

He was again turned down:

> Date: Mon, 27 Nov 2000 16:58:45 -0500 (EST)
> From: Ronald Stamper <stamper197@earthlink.net>
> To: Graham Toal <gtoal@vt.com>

> PS: I called SWBELL today regarding ISDN.. and they said "Sorry that office is still closed, and theres no way to get around it."

Graham

From: Butch Kemper [kemper@tstar.net]

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

Sent: Friday, December 15, 2000 11:47 AM
To: mike@tgn.net
Cc: TISPA list
Subject: Re: [TISPA-ISP] ISDN Hassles

Try making a DOVBS call.

There is one CO in our area that has ISDN service but has trunks to the CO that serves my ISP are non-64k, non-clear channel trunks. The customers in that CO are able to make DOVBS calls and get ISDN service.

Butch

At 08:27 PM 12/14/00, you wrote:

>Ok so we can't get DSL out here in the sticks, yet.

>

>I moved to a Sprint-Centel town and can get ISDN. That's good because

>with the local calling scope I can call into one of my pops and get

>access and sell access for my customers, right?

>

>WRONG!

>

>Sprint says SWBell is refusing to switch to their circuits because all

>the inter-CO feeds are AMI/56K channels. The local telco says SWBell

>won't upgrade the trunks and will not switch. The local telco says I'm

>64K... but that's just as long as I stay within the local switched

>area. Useless!

>

>I guess Sprint can technically say that they've done their deal but...

>

>Missed opportunity for increased sales tax revenue for the city and

>state, missed opportunity for them to sell ISDN, missed opportunity

>for me and my customers.

>

>Sprint's Internet is not locally available so I suppose there's not an

>attempt to keep me from competing but what about when it becomes

>available? What if they bring some of their wireless IPS killer

>technology and I'm stuck with providing 56K (V.34) and slower to

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

>locals.

>

>What would you do?

>

>Thanks

>mdb

>

>Michael Butler, Texas GulfNet, | www.tgn.net

>908 South Brooks, PO Box 2089 | Voice 979-798-NETT

>Brazoria, TX 77422-2089 | FAX 979-798-6398

>-----

TSTAR Internet, Inc | Making the Net Work
Marble Falls, TX | Serving Blanco, Burnet,
830-693-6967 | Llano, and Mason Counties

From: bobby@burrow.com

Sent: Friday, April 27, 2001 3:35 PM

To: wsmc@smccollough.com

Subject: SBC Complaint - Request for Advice

Mr. McCollough,

As a TISPA member, I understand that you have represented the association and its members on several occasions regarding action or complaints against carriers, such as SBC.

I am wondering if I can forward my issue to you for either support or advice.

In Nov. of '00, we entered into a contract for SBC to provide 'SmartTrunk' trunks to us for the purpose of building a dialup POP. We were to start business as an ISP before Christmas. We negotiated with SBC for the proper type of service prior to entering into the contract by requesting PRI or CT1 circuits. We were told that PRI was not available in our area with a local calling scope. The location of our business is in Wills Point (55 miles east of Dallas). We were told that we could get channelized T1, though. When we explained what we were using the trunks for (connecting them to USR TCM chassis' for modem pooling) they 'recommended' the SmartTrunk service to meet our needs.

We were given an target installation completion date of 12/29/00. On 12/29/00 we

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

contacted SBC and were told that the cable they needed was not available and there would be an additional two week delay. Two weeks later, the cable was installed and the installers left. We were unable to use the trunks due to wiring defects between the CO and our office. After another week, they corrected the problem and were able to start testing.

We were experiencing very poor voice quality and unacceptable data rates. We contacted SBC and were told that our equipment was either not setup correctly or was defective. We spent about a week going through the equipment and found nothing. The SBC rep told us that he did not know what to do about our problem at that point.

We visited the local CO and talked to the area manager and the local technician about our problem and they said they were aware of it, but there was no hope in us expecting high data throughput because the local CO was ALL analog. There are no digital facilities there at all.

In the beginning, we were told that the SmartTrunk service would provide us with digital quality trunks that would allow us to operate effectively as an ISP.

The truth is that they cannot provide local digital service.

Now my dilemma. We contacted our local SBC rep and explained that they had never finished commissioning the trunks and we had not accepted the installation. In the mean time we were being billed monthly from 1/5/01 for the T1 service. I told the rep to cancel the contract because what they installed was not what we were told we were buying. He refused. His comment to me was that I could either convert the contract to another similarly priced service or payout the remainder of the 3 year agreement in full.

I do not expect to do either. We have had to outsource our dialup services to a neighboring cities Verizon exchange (still providing a local calling scope). This was just to get started and to recoup losses from the delayed launch of our business.

Can you recommend to me what action I should take, if any? Any advice would be appreciated.

Bobby Burrow
East Texas Rural Net, Inc.
(903)873-8448

Attachment 5

Disparagement of ISPs, and Promises to Bring Ip SBC Internet Services Sooner

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

----- Original Message -----

From: "Howard Beecher" <howardb@jump.net>

To: <president@tispaspa.org>

Cc: "Dewey Coffman" <dewey@jump.net>

Sent: Monday, April 23, 2001 12:26 PM

Subject: SWB cheating again...

> Mayank Parmar

> 9511 ASHDOWN FOREST DR

> SPRING, TX 77379

> 281-257-8881

>

> * was told by SWB that they could get him up in 1 week. He's going
with SWB. Old NP customer.

>

> =====

>

> Terrace Mountain Systems

> 500 Capital Of Texas Hwy, Suite 120

> Austin Tx, 78746

> 512-347-1050

>

> * was told by SWB they could be up in 2 weeks, as long as it would
take for ISDN.

>

> _____
> Howard Beecher DSL Sales Manager

> Voice Mail: (512) 532-2280

> Toll Free: (888) 249-4375 x1080

> Fax: (512) 257-4701

> Cell Phone: (512) 656-5124

> Email: howardb@jump.net

> Pager Email: page-howard@jump.net

>

> _____

>

Attachment 6

**Calling Scope Issues:
Call Forwarding/Disaster Routing
Local Plus/1+ Direct**

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

From: Chad Kissinger [chad@onr.com]
Sent: Monday, October 23, 2000 11:33 AM
To: Allen Jenkins
Cc: members@tiswa.org
Subject: Re: [TISPA-M] Disaster Routing Service

I've used it before.... when our San Antonio office burned 3 years ago, we forwarded all of our calls to our Austin POP while we rebuilt. Ask them to quote the tariff....

On Mon, 23 Oct 2000, Allen Jenkins wrote:

> I have several (DRS) Disaster Routing Service numbers in place now to
> forward traffic to my POP's and recently placed an order for another one.
> Bell is now telling me it is against their tariff for an ISP to use their
> DRS. Does anyone know if this is true or not?
>
>

Chad Kissinger Complete chad@onr.com
President Internet 512-322-9200
Onramp Access, Inc. Solutions http://www.onr.com

Internet Access, WWW Production, System Integration, SUN and Compaq

From: FULKS, PAULA J (Legal) [PF3864@txmail.sbc.com]
Sent: Tuesday, October 24, 2000 4:57 PM
To: Scott McCollough
Subject: [TISPA-M] Disaster Routing Service

As I understand it, the issue probably has to do with Disaster Routing Service being a call forwarding based service that should not be configured to expand a customer's calling scope on a continual basis. The tariff reference is; General Exchange Tariff, Section 10, Paragraph 2.9 "Services

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

with call forwarding capabilities (including Call Forwarding, Selective Call Forwarding, Simultaneous Call Forwarding, Call Forwarding-Busy Line, Call Forwarding-Don't Answer) cannot be used on a continual basis to expand the calling scope beyond that available to a customer's premises."

Let me know what you think could be said to avoid the tariff issue. I am not opposed to working a reasonable interpretation, but as you know we have to be careful of allowing call forwarding-type services to avoid long distance or expanding the local calling scope, else it undermines our rate structure.

>
> -----Original Message-----
> From: Allen Jenkins [mailto:gkins@nwol.net]
> <mailto:[mailto:gkins@nwol.net]>
> Sent: Monday, October 23, 2000 10:40 AM
> To: members@tispas.org
> Subject: [TISPA-M] Disaster Routing Service
>
>
> I have several (DRS) Disaster Routing Service numbers in place now
> to
> forward traffic to my POP's and recently placed an order for another
> one.
> Bell is now telling me it is against their tariff for an ISP to use
> their
> DRS. Does anyone know if this is true or not?
>

From: Cary Fitch [sage@the-i.net]
Sent: Tuesday, November 07, 2000 3:42 PM
To: member@tispas.org
Subject: [TISPA-M] Call Forwarding

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

We have a case where SWBell has changed our service without telling us.

We have a local physical telephone line with "*72" call forwarding.

We had it set up for 4 paths of forwarding. No question about that.

As of a week ago it will only forward 1 path.

Now when we call and inquire, they don't seem to know anything about that, or even that it could have been that way.

Cary Fitch

From: Cary Fitch [sage@the-i.net]
Sent: Wednesday, February 21, 2001 6:58 PM
To: ISP@tisp.org
Subject: Re: [TISPA-ISP] Another typical day as an ISP

Agreed but with reservations.

Yes, they tell you that you can have up to 99 paths. And if you order it with 20 40 or 99 paths, you should get the service you order. The "But we will choke you if we want to." when that is not what your ordered is a deceptive trade practice in my opinion. (IANAL). Particularly when THEY told you you could order a second number and get another 99 paths.

However, consider this:

If it is a toll call, or if there is some trunkage issue, they expect to get a certain revenue per line. You have a line for "\$40", and a fee of \$2.50 for DRS and expect to carry 99 calls for that. Is that reasonable?

BTW, I wouldn't use the term "Disaster Recovery Service". I like better just getting a line a a location, getting call forwarding, then asking for multiple paths for the \$2.50 fee. Why? Because there is no disaster involved. No special case. It is just a service offered and ordered, and being used as planned.

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

In regard to the line about "service being available for more of their customers", it is their customers who are getting busies when they call your number right?

SWHell has another angle. They are claiming that you can't use call forwarding to allow ISP customers (or others?) to call to an area where they couldn't call before. Strangely, that is exactly what they wanted to happen when the first offered Remote Call Forwarding (RCF). They wanted you to have a number in "Thattown" so the Thattown people would think you were local and call your number, and YOU would pay the LD to Yourtown. All of a sudden the rules have changed if the local Telco isn't making money off the calls. It is all a case of "Do we get money." If they get money, it is within their rules, if they don't get money it is outside their rules.

Cary Fitch

----- Original Message -----

From: Allen Jenkins <gkins@nwol.net>

To: <ISP@tispaspa.org>; <ISPC-MEMBERS@ISPC.ORG>; <isp-ceo@isp-ceo.com>

Sent: Wednesday, February 21, 2001 6:29 PM

Subject: [TISPA-ISP] Another typical day as an ISP

> Hello TISPA and ISPCEO's:

>

> I thought I would relate my latest saga with SBC for your perusal. Some will find it incredible, some will just say "typical".

>

> In December I moved a POP in a small community to a bigger city and ordered Bell's DRS to carry the calls from the small city to the big one. I was told that the DRS number would only carry 99 calls but I could get another one to roll that one into and have a total of 198 calls forwarded to my new POP.

> That's how I ordered it and of course customers dialing into the DRS number received busies because they hadn't set up enough paths. Last week after the usual run around and countless phone calls on my part they actually added
> more paths and now I don't get busies at that POP.

>

> I had been having the same problem in a different area with three other
> cities set up the same way but going to a different POP. I asked my

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

> secretary to call a SBC rep who is higher up the chain than the one I had
> dealt with and also this one had helped us before on another issue. I felt
> she was sympathetic and would get things done faster this time around. My
> secretary explained to her that we knew there were not enough paths to
> carry the traffic on these other DRS lines and asked that she take care of it. I
> received a fax today from this rep with her answer and am re-writing it
> verbatim below.
>
> "Good afternoon Alan,
>
> How's it going? It just never seems to slow down - oh, well, I guess it
> keeps me from being bored. Ha-Ha!
>
> Amanda XXXXXX called me requesting tests on the numbers:
> xxx-xxx-xxxx & xxx-xxx-xxxx
> due to your customers expressed that they were receiving busies, and yet,
> your equipment did not reflect any times that all trunks were in use. I
> checked on these numbers and they are lines in each town with Disaster
> Recovery Service on them. This basically is a forwarding that has been
> programmed through our network that directs any callers to those numbers
> to be sent to your main offices, e.g. XXXXXX. Disaster Recovery Service was
> not designed for this type of use, but like others of our services, different
> applications have been discovered. Since these arrangements were put in
> place, we discovered that with this "forwarding" application being used by
> our ISP customers, our central office facilities were being over-extended.
> So, since the service was not designed for this "abuse", we elected
> to choke the paths (or usage) during peak times to make our central offices
> available to more of our customers. And, we no longer offer this type of arrangement
> of our Disaster Recovery Service. So, what I am trying to tell you is that
> you are not paying for any set number of paths and the parameters of our
> central offices allow us to designate customer coverage; therefore, you and
> your customers may experience busies from our central offices over these
> lines or any others that are on this type of set-up at any time. We have
> other products and services that might better serve your needs, and if you
> are interested in checking on these, please call our ISP customer services
> department at 1-877-767-9477. Thanks."
>
> My God, can you believe this nonsense? Let's look at what she just said...
>

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

> "Disaster Recovery Service was not designed to forward all calls." (When I
> order the service for the numbers she is referring to 5 years ago, I was
> told they would forward ALL calls. When I ordered it in December of 2000 I
> was told it would carry 99 calls each number).
>
> "...application being used by our ISP customers...facilities were being over
> extended." (Why shouldn't Bell put in more facilities to take care of this
> over extension? If my customers get busies, I put in more "facilities").
>
> "...not designed for this "abuse"..." (Oh, I see, this was supposed to be
> just regular call forwarding that they could give a cool name to and charge
> 4 times as much).
>
> "...choke paths...to make our central offices available to more of "our"
> customers." (This takes the cake. I knew I wasn't really one of "their
> customers" and now they have finally admitted it).
>
> "...you are not paying for any set number of paths..." (Lie LIe, LIE!!!
> Either she is or my ISP group account rep is).
>
> "...you and your customers may experience busies...at any time." (I and mine
> will but Bell's won't).
>
> "...other products and services..." (Yes, I know there are and everyone on
> this list knows the price difference and why Bell would rather we buy those
> other products and services).
>
> I'm not sure if I can get anything done about the busy signals my customers
> are experiencing, but I can assure everyone on this list, (SBC especially
> ;)), that if this problem is not resolved, all my 10,000 plus customers will
> know why a few cities in our coverage area get busies. I would also urge
> everyone to monitor their DRS numbers and if you would like to work together
> over this new screwing we're getting let me know. I don't know how many
> aggregate customers we could muster across Texas and the rest of Bell's
> territory to take up a pen or send an email, but I'm sure it would be enough
> to get some real publicity. Let me know.
>
> Allen Jenkins

Attachment 7

SBC Refusal to Offer a BSA for DSL Loops

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

INVESTIGATION OF SOUTHWESTERN)
BELL TELEPHONE COMPANY'S ENTRY) PROJECT NO.
INTO THE TEXAS INTERLATA) 16251
TELECOMMUNICATIONS MARKET)

WORK SESSION
SEPTEMBER 11, 1998

BE IT REMEMBERED THAT AT approximately
3:25 p.m., on Friday, the 11th day of September
1998, the above-entitled matter came on for
continued hearing at the Offices of the Public
Utility Commission of Texas, 1701 North Congress
Avenue, William B. Travis State Office Building,
Commissioners' Hearing Room, Austin, Texas
78701, before KATHERINE FARROBA, Administrative
Law Judge; and the following proceedings were
reported by William C. Beardmore, a Certified

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

Shorthand Reporter of:

VOLUME 16

Pages 980 - 1050

/snip/

1020

1 MR. SRINIVASA: So that's a
2 separate issue. Anyway, that came in here.

3 MR. DEERE: Yeah. I just
4 kind of slipped that on you there.

5 (Laughter)

6 JUDGE FARROBA: Let me just
7 clarify. And we would take up again some
8 of the checklist items -- recommendations
9 under Checklist Item 1 that are also

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

10 collocation at the same time so that we
11 have all the collocation issues addressed
12 in --

13 MR. DEERE: Yeah. I believe
14 that's why that came up at that point, that
15 we came back from a break, and the
16 discussion was, is that we would not
17 address Checklist Item 1, Issue 3 today and
18 that the week of September 21st was
19 suggested as the time that that would be
20 discussed and the cageless collocation
21 alternative would be discussed. I think
22 that's why it got slipped into your notes
23 at that point.

24 MR. SRINIVASA: Yeah. There
25 was another discussion from TISPA. They

1021

1 had a concern that they were using a dry
2 wire pair through a tariff private line or
3 the special access tariff, and their
4 purpose was to use those pairs to provide
5 ADSL service.

6 And Southwestern Bell's position
7 was that they cannot do so unless -- if --
8 I believe that TISPA's -- Mr. Scott
9 McCollough expressed it was that because of
10 the Spectrum management issue, and the
11 answer was "yes." Is that correct?

12 MR. DEERE: That is a part
13 of it, that it was the Spectrum management
14 issue. The other was, I believe, that
15 there is no resale available of an ADSL
16 loop because there is no ADSL tariff to
17 resale.

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

18 MR. SRINIVASA: Is that your

19 understanding, Mr. McCollough?

20 MR. McCOLLOUGH: That's what

21 they said. Of course, we disagree.

22 MR. KRIDNER: This is Kirk

23 Kridner, just for the record. We also

24 raised the issue that this is not a UNE

25 issue that is appropriate for this

1022

1 proceeding.

/end snip/

Attachment 8

SBC DSL Terms for ISPs

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

1-22-01

ISP Name and Address

Re: Internet Access Services Program

[ISP Name] and SWBT are parties to a DSL Partnership Program Agreement dated [contract date]. The term of that agreement expired on December 31, 2000, but was extended by a written addendum to January 31, 2001. Please be advised that the Agreement will not be further extended or renewed and that your participation in the Southwestern Bell DSL program will come to an end on January 31, 2001.

Please be aware that as of February 1, 2001, you will no longer have access to the SBC Central for ISPs web site and that you will no longer be eligible for commissions on DSL services which you purchase.

Of course, you will still be able to purchase DSL service from SWBT. If you would like to place orders for DSL service in the future, please contact the ISPSC group at 1 800-308-9488 for assistance.

Your Account Manager will handle any questions regarding your telecommunications services.

Southwestern Bell appreciates your past participation in this program. We wish you continued success in your business endeavors.

Regards,

Leticia E Torres
Senior Manager
ISP Alliance
Southwest Region

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

01-22-01

**WILL PUT IN NAME AND
ADDRESS OF EACH ISP**

Re: DSL Partnership Program Agreement

{ISP Name} and SWBT are parties to the DSL Partnership Program "Agreement" dated [contract date]. The term of the Agreement ended on December 31, 2000. In late December 2000, I sent you an addendum offering to extend the Agreement until January 31, 2001. I did not receive back an executed addendum extending the Agreement. Accordingly, this letter confirms that as of December 31, 2000, the Agreement has expired and you are no longer a participant in SWBT's ISP Program.

Please be aware that as of February 1, 2001, you will no longer have access to the SBC Central for ISPs web site, and that you will not longer be eligible for commissions on DSL services which you purchase.

Of course, you will still be able to purchase DSL service from SWBT. If you would like to place orders for DSL service in the future, please contact the ISPSC group at 1 800-308-9488 for assistance.

Your Account Manager will handle any questions regarding your telecommunications services.

Southwestern Bell appreciates your past participation in this program. We wish you continued success
in your business endeavors.

Regards,

Leticia E Torres
Senior Manager
ISP Alliance
Southwest Region

**INTERNET ACCESS SERVICES PROGRAM MARKETING
AGREEMENT**

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INTERNET ACCESS SERVICES PROGRAM MARKETING AGREEMENT

THIS AGREEMENT, effective as of the date of the last signature hereon, is by and between Southwestern Bell Telephone Company, (hereinafter referred to as "Company") a Missouri corporation, and _____, a _____ (herein referred to as an Authorized Sales Representative "ASR"). This Agreement replaces any and all previous marketing agreements between the Company and ASR with respect to the subject matter and term contained herein, and any and all such marketing agreements are hereby terminated.

WHEREAS, Company is engaged in the business of marketing and providing telecommunications services;

WHEREAS ASR is an Internet Service Provider and desires to become a sales representative for certain services provided by Company or its affiliates (Company and its affiliates, as defined in Section XII.4.a, below, (unless otherwise indicated, Company and its affiliates are hereafter collectively referred to as the "Company");

WHEREAS Company wishes to engage ASR to promote the sale of such services;

THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

I. EFFECTIVE DATE AND TERM OF AGREEMENT

The term of this Agreement shall commence as of the date of the last signature hereon, and shall continue through December 31, 2001, unless terminated earlier by either party pursuant to this Agreement.

II. SERVICES

1. The services subject to this Agreement ("Services") are listed in Exhibit C, attached hereto and incorporated herein by reference.

2. Company reserves the right to modify Exhibit C, including, but not limited to, modifying, adding to, and/or deleting Services and commissions, at any time effective upon written notice, except that, unless otherwise stated in Exhibit C, Company may only decrease commissions on Services on thirty days written notice. Company further reserves the right at any time to change the terms, conditions or specifications of any Services as shown in any contracts or tariffs, to alter or eliminate any Services or any

aspects thereof, and to change any Service rates. ASR shall have the right within thirty days of receipt of written notice of such changes to terminate this Agreement.

III. Relationship of Parties

1. The relationship between the parties established by this Agreement is that of independent contractors. Neither is an agent or employee of the other. Neither Party has any right or any authority to enter into any contract or undertaking in the name of, or for the account of the other, or to assume or create any obligation of any kind, express or implied, on behalf of the other, nor shall the acts or omissions of either create any liability for the other. ASR shall at no time represent itself as Company. ASR shall conduct its business at its own initiative, responsibility and expense. ASR shall be responsible for its own acts, and those of its employees, agents, subordinates, and contractors during the performance of ASR's obligations under this Agreement.

2. Notwithstanding the foregoing, when Company confirms customer eligibility for Services, ASR shall be considered the agent of Company for the purposes of receiving and safeguarding such eligibility information. "Receiving" shall mean to take possession of eligibility information. "Safeguarding" shall mean the obligation to take all reasonable steps to ensure against the unauthorized release or use of eligibility information. ASR shall receive and use such eligibility information for the sole purpose of marketing the Services. The terms and conditions of Section VIII shall also apply to the provision of this eligibility information.

3. Company hereby appoints ASR to market, promote the sale of, and solicit orders for Services, as defined in Exhibit C, within the geographic market areas specified in Exhibit B, attached hereto and incorporated herein by reference. Company reserves the right to appoint other ASRs and agents in the same or similar capacities.

4. Company reserves the right at its option to market any and all Services to any and all customers. Company reserves the right at any time to provide additional sales and marketing services with respect to ASR's customers and will not pay any commission for such services. Company reserves the right to market customer premises equipment ("CPE") and all other products and services in competition with ASR.

5. ASR accepts this appointment and agrees to exert commercially reasonable efforts to promote, on Company's behalf, certain of Company's Services, to provide sales support activity, to meet the volume expectations established in Exhibit D ("Volume Expectations") (attached hereto and incorporated herein by reference) and to meet any quality targets established by Company. Results will be measured against the volume expectations on a monthly basis and any failure to meet such expectations and/or any failure to make any sales within a consecutive three month period may result in termination of this Agreement under Section XI(1)(i) below. ASR recognizes that service quality and volume expectations will generally be established on a calendar year basis. Exceptions to this include, but are not limited to, additions of products, deletions of products and changes in the competitive environment. New commission structures, and

any changes thereto, will become part of this Agreement.

6. ASR represents that it is not an Authorized Sales Representative of Company under Company's Sales Agency Program or Company's Data Services Program. If, during the term of this Agreement, ASR or an affiliate should become an Authorized Sales Representative or part of any other compensation/commission program offered currently or in the future by Company, this Agreement may be terminated immediately.

7. ASR agrees if Company identifies a situation in which ASR's activities are violating this Agreement, Company may (1) withhold payment of commission during the investigation of such violation, and (2) require ASR to cease all activities hereunder. Failure to cease the activities hereunder as directed by Company is cause for immediate termination of this Agreement. ASR shall work with Company to resolve the issues causing Company to impose such requirement(s), and shall not resume activities hereunder until such issues are resolved.

8. Company shall supply ASR, from time to time, with a reasonable number of brochures, price lists and other material necessary for promoting the sale of Services, and with reasonable support for training ASR's personnel. If ASR requires unusual support or excess services, a charge may be applied for such support or services. Any portion of the foregoing material for which ASR has been charged which remains unused at the time Company makes changes in any Services when such changes make such material unusable, or upon the termination of this Agreement, except where such termination results from ASR's acts or omissions, may be promptly returned to Company for credit.

IV. ASR's Responsibilities

ASR agrees:

1. To act as a single point of contact for the customer's Services needs.
2. To only submit orders for Services on behalf of customers who have authorized the placement of such orders after being fully informed of the related charges, terms, and conditions. Customer must also be informed that the network portion of the service is being provided by Company.
3. Before requesting information from Company about a customer's account, to provide Company with a letter of authorization ("LOA") signed by the customer authorizing such disclosure. Such LOA will be in a format approved by Company. ASR shall store the LOAs in a secure location and retain them pursuant to the provisions of Section VIII, and shall immediately produce them for Company's inspection and review upon request. If requested by Company, ASR shall also send such LOAs to Company as part of the ordering and qualification process.

4. . ASR is responsible for providing its personnel with sufficient training that Company reasonably deems necessary to maintain a staff of competent sales personnel conversant in the specifications, features and advantages of Services. Such training will include instruction as to the proper use of, and restrictions on the use of, information as set forth in Section VIII herein. ASR agrees that if it schedules any training with Company and fails to cancel such training at least three business days before the class date, or fails to attend, Company may, at its sole discretion, charge ASR a minimum of \$150 per person per day plus any additional reasonable fees to cover Company's costs.

5. Not to use random or sequential dialers or automatic dialing and announcing devices ("ADADS") in placing calls to customers.

6. Upon request from Company, to provide Company with the Federal Taxpayer Identification Number and/or, as appropriate, the Social Security Number, for ASR to be used for tax reporting purposes.

7. ASR shall market Services to customers strictly in accordance with the prices, terms, and conditions set forth in applicable Company tariffs, policies, and customer service standards for the sale of the Services hereunder. The Company reserves the right, without notice, at any time to change the specifications of any Services as shown in tariffs, to alter or eliminate any Services or any aspect thereof, or to change any Service rates. For any contracts or services offered under contract, ASR shall offer such Services subject to the applicable terms and conditions contained in such contract.

8. If ASR provides CPE, it must coordinate its installation of CPE for all of ASR's customers with installation of any services to be provided by Company, in a manner and within installation intervals acceptable to Company, and in conformance with any agreements between ASR and such customers with respect to due date. ASR will employ sufficient technical staff to provide service and support for such CPE.

9. ASR will provide Services sales support functions including, but not limited to: providing customers with information regarding Services (i.e. brochures, pricing); managing client implementation issues for Services sold under this Agreement; and answering customer billing questions regarding ASR's products and Services ASR has sold to customer. ASR shall refer all other customer questions on Services, including billing questions not associated with Services sold under this Agreement, to Company.

10. ASR will take action as needed to meet customer service requirements and to ensure that its activities are properly coordinated to customers' and Company's satisfaction. ASR is responsible for the prompt reporting to Company of customer complaints. ASR agrees to escalate customer issues within the Alternate Channels organization following Company's escalation procedures.

11. Each party shall submit to the other for approval prior to use all advertising material and customer collateral that refer in any way to the other's services or products or to this Agreement. Any advertising performed by ASR to promote the

Services covered by this Agreement shall be done at ASR's own expense. Any advertising copy outside the scope of the material provided by Company to ASR (i.e. new copy or entirely new advertisements such as Directory ads, direct mail, flyers, etc.) must be submitted to Company for its prior review and written approval, at least thirty days before use, or such shorter period as agreed to by Company, and ASR shall, solely at ASR's expense and prior to use of any such advertising material, make any and all changes, corrections or alterations to such material that Company, in its sole discretion, deems necessary or advisable.

12. ASR agrees at all times to act in a professional and ethical manner and maintain a level of quality of service to its customers satisfactory to Company in its sole discretion in accordance with standards established by Company and then in effect. ASR agrees that it will not make misleading statements to customers, give money, gifts or any other consideration to Company's employees, or do anything that will dishonor, discredit, reflect adversely on, or injure the reputation of Company. ASR further agrees to comply with all statutes, rules, regulations, and decisions which apply to Company's employees marketing similar products to similar customers.

13. ASR will take and permit to be taken by Company all actions reasonably requested in order to ensure adequate opportunity for review of ASR's performance by Company, including, but not limited to, observation by Company of ASR's employees in their performance of the duties and obligations of this Agreement and periodic review and analysis by Company of the customer service provided by ASR.

14. If ASR elects to telemarket any of the services listed in Exhibit C, ASR must first secure written permission from Company. The employees engaged in telemarketing must be physically located upon ASR's business premises unless authorized in writing in advance by Company.

V. Orders

1. ASR agrees to place orders only with the channel(s) designated by Company, in a manner consistent with the then current documented standards, order format, data requirements, method of transmission of orders, procedures and time frames set by Company. ASR agrees not to place orders with other Company internal sales channels, unless otherwise authorized in writing in advance by Company, or with other ASRs. ASR will receive compensation only on orders it places as prescribed, unless otherwise authorized in writing in advance by Company.

2. All orders entered by ASR from customers shall be in accordance with Section IV. ASR shall determine availability of Services on the basis of information received from Company. All orders shall be subject to the availability of suitable facilities, which shall be determined in the sole discretion of Company. All orders for Services shall be further subject to approval and acceptance by Company. In the event an order submitted by ASR is rejected, Company will supply ASR with a specific reason for such rejection.

3. Company reserves the right to require a deposit from any customer for services sold by ASR and to request that ASR secure from the customer credit information as specified by Company, which ASR shall forward along with the order. ASR does not hereby guarantee the credit of any customer, but does agree that it will use commercially reasonable efforts to obtain accurate credit information. ASR shall inform customer that an order for service may not be considered binding upon Company until received and approved by Company, including receipt of any applicable deposit.

4. Each party shall maintain records of all sales made pursuant to this Agreement. A price quote signed by the customer for each order, in a form approved by Company (e.g., a Business Service Application), must be maintained as part of ASR's records, and shall be made available for review upon request. All such records and all other records pertaining to its performance under this Agreement shall be retained by each party for a reasonable period of time, for at least four years from the date of final payment by Company for services rendered under this Agreement. Each party and its authorized agents and representatives shall have access to such records of the other party for purposes of audit during normal business hours during the term of this Agreement and for four years from the date of final payment. A party shall notify the other party in writing at least seven days before it intends to conduct such an audit, except that such audit may be required on 24 hours notice to comply with regulatory requirements or in circumstances adversely affecting customer(s) services.

VI. Commissions

1. Subject to the restrictions regarding sales of Services to the entities specified in paragraph 4 below, and provided that ASR has fulfilled its obligations under this Agreement, for each completed Service sale made by ASR, Company shall pay to ASR the commission provided for in Exhibit C for the particular Service ordered. If the customer terminates its Services within the time period specified in Exhibit C for the specific Services involved, any such commission shall be, at Company's option, refunded to Company within thirty days or deducted from later commissions otherwise due ASR. Company shall pay commissions only for qualifying orders placed by ASR during the term of this Agreement.

2. After termination of this Agreement, any debit commission balance for ASR shall be paid by ASR to Company within thirty days written notice of such debit commission status. Until such debit balance is paid to Company, ASR will not be considered for participation in any Company channel program.

3. Upon termination of this Agreement, ASR's final commission check may, at the discretion of Company, be held by Company for up to six months from the termination date.

4. ASR will receive no commissions for ASR's sales of Services to:

- (i) ASR or to affiliates (as defined in Section XII) of this Agreement;
- (ii) Any business or individual under contract with Company to market Services;
- (iii) Resellers of Services; or
- (iv) Company or its affiliates.

Notwithstanding the foregoing, ASR will receive commissions for ASR's sales of Services that are ordered by and billed to the ASR when all of the following conditions are met:

- (i) ASR is ordering and billing Service as a means to facilitate the sale of another service which is not telecommunications service (e.g. Internet access, network management);
- (ii) ASR is ordering a Service that originates or terminates with an end user who is not affiliated with ASR; and
- (iii) The Service ordered is either a private line or a virtual private line.

The commissions on such sales shall be computed on the basis of the circuit terminating at the end user's site.

5. No commission shall be paid to ASR for any orders for Services sold to a customer directly by Company or sold to a customer by any entity other than ASR. Company shall pay commissions only for qualifying order(s) placed by ASR during the term of this Agreement.

6. Subject to Company's rights under Section II, the applicable commission rate will be based on the commission rate in effect on the date of service order completion in Company's billing system.

7. ASR's eligibility for a commission based on a sale of Services accrues as of the date of service order completion or upon payment for prepaid eligible contracts, whichever is later. Except as otherwise provided herein or as specified in Exhibit C, amounts due hereunder shall be paid by Company to ASR on or before the last day of the month following the month in which Company bills the customer.

8. Company shall have the right to deduct from payments to ASR any

amounts owed to it by ASR, including, but not limited to, customer account adjustments (including those due to incorrect or inappropriate use of promotions), amounts due for advertising, or amounts due for failure to attend scheduled training or other seminars or workshops. Company shall also have the right to require ASR to pay to Company any amounts owed to Company by ASR.

9. ASR shall have one year from the date of completion of a service order in which to claim payment for such sale of Services, to raise any discrepancies regarding such payments, or to otherwise raise any issues regarding commissions on sales of Services. Such claims shall be made with specificity in writing and shall include all supporting documentation. Company shall have no obligation to make payments or adjustments beyond such one year period.

VII. Exclusivity

1. ASR shall specify by initialing below whether it elects to market the Services specified in Exhibit C exclusively on behalf of Company or to also market or otherwise promote the functionally similar services of other providers. ASR that designates itself as “exclusive” and is subsequently determined by Company to be “non-exclusive” shall be subject to immediate termination. Company’s determination of whether ASR is “exclusive” shall be final.

ASR hereby makes an election by initialing below:

() Exclusive - ASR elects to market or otherwise promote exclusively the Services specified in Exhibit C and to obtain from Company and use Company’s services to meet its service requirements. ASR will not use the services of another provider which compete with the Services specified in Exhibit C, except in those instances where Company does not provide a functionally similar service in which case ASR may, only for so long as Company does not have a functionally similar service, use the service of another provider. ASR will not take any action, in return for compensation of any type from another provider, which would result in an end user’s service being provided in any way using the services of any provider other than Company, unless a functionally similar service is not available from Company. If approved in writing by Company, ASR may purchase or submit orders for network facilities from another provider to serve strictly as redundant network facilities in case of network failure. ASR shall receive payment of commissions on a per unit basis, as described in Exhibit C, and ASR may use Company’s ASR logo (if such logo is available) or other SBC Marks authorized by Company in its sole discretion. ASR shall be permitted to provide a link to its Web site from Southwestern Bell’s Web page when available.

() Non-Exclusive - ASR elects not to market or otherwise promote exclusively the services specified in Exhibit C. ASR shall receive payment of commissions on a per unit basis, as described in Exhibit C, and ASR shall not be permitted to use ASR logo or other SBC Marks authorized by Company in its sole discretion.

2. During the effective period of this Agreement, any changes to this election will require negotiation of a new contract and will be at the Company's sole discretion.

VIII. Confidentiality

1. ASR acknowledges that 1) Company is a telecommunications company with a duty not to release confidential customer information without prior written consent, and that (2) unauthorized release of confidential customer information may result in Company suffering significant injury including, but not limited to, monetary damages and impairment of Company's relationship with its regulators, customers, and potential customers.

2. All information relating to either party's customers and business, including but not limited to the terms and conditions of this Agreement, and all information that is marked confidential and/or proprietary or is designated as confidential and/or proprietary when disclosed, which is disclosed by either party to the other pursuant to this Agreement, other than such information as may be generally available to the public or the industry, is and will be disclosed in confidence solely for use in the conduct of business hereunder. Nothing contained herein shall grant either party any right, title, or interest to any information provided by the other party hereunder. Each party agrees to keep such information secret and confidential and not to disclose it to any other person or use it during the term of this Agreement or after its termination except in carrying out its obligations hereunder or in response to obligations imposed by tariff or order of a court or regulatory body.

3. Each party shall take effective precautions, contractual and otherwise, reasonably calculated to prevent unauthorized disclosure or misuse of such information by any of its employees or by any other person having access to such information.

4. Within thirty days after the termination of this Agreement, by either party and for any reason, each party shall notify the other which specific information disclosed by it pursuant to this Agreement is to be returned. Each party agrees promptly to return to the other any physical or written records containing such specifically identified information then in its possession, regardless of whether such physical or written records were prepared by ASR or by Company. The duty to keep information confidential shall continue notwithstanding the termination of this Agreement. Upon the termination of this Agreement, all confidential information in tangible form provided to ASR by Company shall be returned to Company.

IX. Trademarks and Trade Names; Invention and Patent Rights

1. ASR shall not be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in or to the use of the name "Bell", the Bell symbol, nor in or to any other trademark or service-mark now or hereafter

owned by Company or SBC Communications Inc. ("SBC"), or any affiliate or parent thereof (for the purposes of this section, collectively "the Company") ("SBC Marks"). ASR shall not use in its business or trade or corporate name the name "Bell", "SBC", or the Company's names or the Bell, SBC, or the Company's symbols, nor shall it use any trademark or service-mark owned by the Company, or adopt or use any similar mark or symbol without the express written consent of the Company, in its sole discretion. Any such consent given is subject to the Company's subsequent right to review and forbid any such use from time to time. ASR agrees that it will comply with any standards for usage of such names, trademarks and service-marks issued or to be issued by the Company. Immediately upon termination of this Agreement, ASR will destroy or turn over to the Company any materials using any trademark or service-mark of the Company, unless the Company has consented to such use pursuant to a separate agreement.

2. The Company shall not be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in, or to the use of, ASR's name, trademarks and service-marks. Subject to ASR's right to review and forbid any such use from time to time, the Company may, during the term of this Agreement or until the Company is notified to the contrary by ASR, use such names, trademarks and service-marks in its advertising. The Company agrees that it will comply with any standards for usage of such names, trademarks and service-marks issued or to be issued by ASR. Immediately upon termination of this Agreement, the Company will destroy or turn over to ASR any materials using any trademark or service-mark of ASR, unless ASR has consented to such use pursuant to a separate agreement.

3. Company may withhold payment of commissions if, and for so long as, ASR fails to comply with this section and any standards provided to ASR with respect to use of any names, trademarks, or service-marks.

4. Invention and Patent Rights. Neither party shall be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in or to any design, invention, improvement, process or system now or hereafter embodied in any services or products provided by the other party, whether or not such design, invention, improvement, process or system is patented or patentable under the laws of any country.

X. Indemnification / Liability / Insurance

1. Indemnification. Each party agrees to indemnify and hold the other party harmless from any and all claims, actions, damages, expenses and other liabilities, including reasonable attorneys' fees and costs, resulting from the first party's acts, omissions or misrepresentations, including but not limited to the first party's failure to perform any of its obligations hereunder, from any defect or failure of any kind in any product or service provided by the first party, or from infringement by the first party of any copyright, trademark, service mark, tradename or similar proprietary rights.

2. Exclusion of Damages. In no event shall either party be liable to

the other for consequential, indirect, special or incidental damages resulting from breach of this Agreement even if such party had been advised of the possibility of such potential loss or damage.

3. Insurance. Without limiting the obligation to indemnify, each party shall maintain sufficient liability insurance, or provide a certificate of self-insurance, to protect themselves and the other party from any and all claims, demands, expenses, costs and other liabilities arising out of their acts, omissions and/or misrepresentations. ASR shall provide a copy of such insurance to Company upon request.

4. ASR will be responsible for obtaining, at its own expense, any applicable permits, licenses, bond, or other necessary legal authorization for work it is to perform.

XI. Termination

1. This Agreement may be terminated by one party immediately upon the giving of notice of any of the following events:

(i) If the other party fails to perform or to observe, or commits a breach of any section, provision or covenant of this Agreement, including, but not limited to, the volume expectations set forth in Exhibit D, and quality targets established by Company, and fails to cure such breach or failure to perform within thirty days, except as set forth below, or such lesser period as Company may require because of legal, business, or regulatory restrictions applicable to Company, following delivery to such defaulting party of a written notice of the alleged breach. However, Company may terminate this Agreement or withdraw any offer of an agreement immediately without providing a period to cure such breach if the breach is: a failure to meet the volume expectations for the preceding calendar year, a failure to return to Company a fully executed Agreement and any subsequent modifications thereof, within 60 days of receipt from Company, a violation by ASR of any legal or regulatory restriction, policies, rules, orders, or other requirements, such as, but not limited to, placing orders for customers who have not requested service, misrepresentation of Company or Company's Services (including but not limited to installation and service charges), charging customers for or accepting fees for adjustments to which the customers are entitled, failing to obtain and maintain the required LOAs, failing to immediately produce the original signed LOAs for Company's inspection, review, and use upon request, misrepresentation of ASR's relationship with Company, actions which dishonor, discredit, reflect adversely on or injure the reputation of Company, or is a breach of Sections IV.2, IV.3, IV.4, IV.5, IV.7, IV.9, IV.10, IV.11, IV.12, VII, VIII, or IX of this Agreement;

(ii) If the other party becomes insolvent or makes an assignment for the benefit of its creditors, or if a committee of creditors or other representative is appointed to represent its business, and that party fails within thirty days following the appointment of such committee or representative or the filing of any such involuntary petition to cause the discharge of such committee or representative or the dismissal of such involuntary petition.

(iii) If ASR fails to pay Company for any valid bill when due, in accordance with applicable contracts or tariffs.

2. If the cause of a breach or failure to perform is an act of God, fire or other casualty, strike, material shortages or other cause similar to the foregoing that is beyond the control of the defaulting party, the period for remedying such breach or failure to perform shall be extended by the time measured by any such cause of delay and for a reasonable time thereafter, and the defaulting party shall not be liable for damages to the other party to the extent they result from such cause.

3. No delay by either party in sending any notice specified herein shall constitute a waiver of its rights to terminate this Agreement.

4. Without waiving any of its rights under this Agreement, Company may, at its sole discretion, do any of the following short of termination if ASR violates any of the terms of this Agreement: (1) withhold or cease paying commission payments, and (2) prohibit ASR from using Company's logos, trademarks, and service marks, and from participation in any additional opportunities including, but not limited to, contests, advertising, lists of leads for sales of Services, referrals for sales of Services, and participation in other similar programs, until such time as the violation(s) of this Agreement are cured.

5. Subject to Company's right of counterclaim or setoff, ASR shall be entitled to commissions earned by it under Section VI based only on sales of Services, including additions, for which the ASR placed an order with Company prior to the termination of this Agreement and which are completed in Company's billing system within six months of termination. Any commissions owed and outstanding at the time of termination of this Agreement shall be paid to ASR by Company within six months following the date of termination. No commissions will be due on any Services ordered from Company after termination.

6. The parties agree that any termination of this Agreement according to the formalities specified herein shall not constitute an unfair or abusive termination or create any liability not set forth in this Agreement.

7. The right of either party to terminate this Agreement is not an exclusive remedy, and either of them shall be entitled, alternatively or cumulatively, to remedies as determined pursuant to Section XII of this Agreement.

8. Survivability. The terms and conditions contained in this Agreement and its exhibits, including but not limited to those contained in Sections IV.3, V.4, VI, VIII, IX, X, XI.5, and Exhibit C, that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the completion of performance or termination of this Agreement.

XII. General Provisions

1. Assignment. ASR acknowledges that it has been specifically selected to participate in Company's ASR Program after careful evaluation by Company of ASR's financial stability, product line and reputation in the business community, as well as the individual abilities and reputation of ASR's management and sales force. Accordingly, the parties agree that neither this Agreement, nor any right or obligation hereunder is assignable, in whole or in part, whether by operation of law or otherwise, by ASR without the prior written consent of Company. Changes of the form in which ASR does business (including but not limited to sole proprietorships, partnerships, limited liability partnerships, and corporations, and changes due to mergers or being acquired), shall be considered to be assignments which will require the prior written consent of Company and requalification of ASR in its new form under the then existing qualification requirements. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. If ASR assigns the Agreement pursuant to this provision, the existing Agreement shall be terminated and a new Agreement shall be entered into with ASR's qualified assignee.

2. Transfers. ASR customer accounts may only be transferred pursuant to a written signed agreement between existing ASRs in good standing, provided Company's prior written permission is obtained.

3. Subcontracting. ASR agrees that it will not subcontract or attempt to subcontract any of its duties or obligations under this Agreement without the prior written consent of Company.

4. Affiliates. For the purposes of this Agreement, an "affiliate" of any entity shall respectively mean:

- for Company:
 - a) any corporation or business entity in which SBC Communications Inc. or any subsidiary of SBC Communications Inc., any successor corporation SBC Communications Inc. or any subsidiary of such successor, or any corporation of which SBC Communications Inc. becomes a wholly owned subsidiary or any subsidiary of such corporation, has an ownership interest of more than ten percent (10%); and
- for ASR:
 - b) any corporation or business entity in which ASR has any controlling interest in any form or from which ASR receives or has the option to receive any profits generated by such corporation or business entity.

Upon request, each party shall provide the other party with a list of its affiliates.

5. Notices and Other Communications. Every notice, consent, approval or other communication required or contemplated by this Agreement by either party shall be in writing and shall be delivered in person, by postage prepaid mail, by

overnight courier service, by facsimile or by electronic messaging addressed to the party for whom intended at the address specified below or at such other address as the intended recipient previously shall have designated by written notice to the other party; provided, however, that any notices with respect to ASR's status as such may not be given by electronic messaging. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and, in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day thereafter, after it was deposited in the mails. Notice given by overnight courier service shall be effective on the date it is recorded by such courier service as delivered. Notice given by facsimile shall be effective on the date noted on the facsimile log as the date sent. Notice given by electronic messaging shall be effective on the date sent, as indicated by the electronic messaging system. Except for notice given by electronic messaging, notice not given in writing shall be effective only if acknowledged in writing by a duly authorized officer of the party to whom it was given.

To: ASR:

To Company

2010 Avenue R., Room 333
Lubbock, Texas 79411

Attn.: Leticia E. Torres
Senior Manager, ISP Alliance

6. No Waiver of Rights. Failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of that obligation or any other obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement.

7. Dispute Resolution.

(a) If a dispute arises out of or relates to this Agreement, and if such dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure.

(b) If the parties cannot resolve the dispute by mediation, any controversy or claim arising out of or relating to this Agreement shall be submitted to non-binding arbitration.

(c) Nothing in paragraphs (a) and (b) above shall prevent the parties from mutually agreeing to use an alternative means to resolve the dispute, such as a "mini-trial" or other procedure. However, if the parties cannot mutually agree to such an alternative procedure, the proceeding paragraphs are binding.

(d) If either party institutes suit to enforce or interpret this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party its costs, including reasonable attorneys' fees.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Texas, excluding its rules governing conflict of laws. If any provision of this Agreement is not valid, it will not affect other provisions and the parties agree that, if that invalidity reveals a situation not provided for by this Agreement, they will jointly seek an agreement having a valid legal and economic effect as similar as possible to the ineffective provision and covering the scope of any missing provision in a manner reasonably directed to the purpose of this Agreement.

9. Regulatory Changes. This Agreement shall at all times be subject to such changes or modifications by the Public Utilities Commissions of the states in which Services are offered, or by the Federal Communications Commission, as said Commissions may from time to time direct in the exercise of their jurisdiction. Company reserves the right to amend or terminate this Agreement to conform it to any requirement of applicable laws or regulations or to any requirement imposed by the a state's Public Utilities Commission or the Federal Communications Commission in the exercise of their jurisdiction over Company, or to any requirement of the United States Department of Justice or the state or federal courts in connection with the Telecommunications Act of 1996. ASR shall have the right within thirty days of receipt of notice of any amendments made pursuant to this section to terminate this Agreement.

10. Discontinuance of Program. Company reserves the right, on three months notice to ASR, to discontinue its ASR Program on a prospective basis.

11. Compliance with Laws. Each party will comply with any and all applicable tariffs, rules and orders of judicial and regulatory bodies, and local, state, and federal laws, including specifically, but not limited to, laws, rules and orders relating to monitoring of employees' telephone conversations with customers, and shall defend, indemnify and hold the other party harmless from and against any and all loss, cost, damage or liability, including but not limited to reasonable attorneys fees and costs, arising from or in connection with any failure of the first party to so comply.

12. Performance of Certain Work. If any work to be performed by ASR under this Agreement is at variance with any law, ordinance, order, regulation, or safety or health standards, ASR shall properly notify Company before performance of the work.

13. Non-Discrimination Compliance Requirements. ASR expressly agrees not to discriminate against any employee or applicant because of race, color, religion, age, sex, national origin or physical handicap during the performance of this Agreement and to comply with the applicable provisions of Exhibit A (Nondiscrimination Compliance Requirements), incorporated herein and made a part of this Agreement. As used in Exhibit A, "Contractor" shall refer to ASR. ASR agrees to submit to Company, on Company's request, a statement that it is in compliance with this subsection.

REPLY COMMENTS OF THE TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

14. Modification. No modification or amendment of this Agreement shall be valid or binding on the parties unless such modification or amendment is made by Company in accordance with Sections II or XII hereof or is in writing and duly executed by the authorized representative of each party.

15. Entire Agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them.

IN WITNESS WHEREOF, the parties have executed this Agreement.

SOUTHWESTERN BELL
TELEPHONE COMPANY

ASR

By: _____

By: _____

(Printed Name)

Title: _____

Date Signed: _____

.

(Printed Name)

Title:

Date Signed: _____

ASR Taxpayer
No.

EXHIBIT A - NONDISCRIMINATION COMPLIANCE REQUIREMENTS

Work under this contract may be subject to the provisions of certain Executive Orders, federal laws, state laws, and associated regulations governing performance of this contract including, but not limited to: Executive Order 11246, Executive Order 11625, Executive Order 11701, and Executive Order 12138, Section 503 of the Rehabilitation Act of 1973 as amended and the Vietnam Era Veteran's Readjustment Assistance Act of 1974. To the extent that such Executive Orders, federal laws, state laws, and associated regulations apply to the work under this contract, and only to that extent, Contractor agrees to comply with the provisions of all such Executive Orders, federal laws, state laws, and associated regulations, as now in force or as may be amended in the future, including, but not limited to the following:

1. EQUAL EMPLOYMENT OPPORTUNITY DUTIES AND PROVISIONS OF GOVERNMENT CONTRACTORS

In accordance with 41 C.F.R. §60-1.4(a), the parties incorporate herein by this reference the regulations and contract clauses required by that section, including but not limited to, Contractor's agreement that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

2. AGREEMENT OF NON SEGREGATED FACILITIES

In accordance with 41 C.F.R. §60-1.8, Contractor agrees that it does not and will not maintain or provide for its employees any facilities segregated on the basis of race, color, religion, sex, or national origin at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where such segregated facilities are maintained. The term "facilities" as used herein means waiting rooms, work areas, restaurants and other eating areas, time clocks, rest rooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees; provided, that separate or single-user restroom and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

3. AGREEMENT OF AFFIRMATIVE ACTION PROGRAM

Contractor agrees that it has developed and is maintaining an Affirmative Action Plan as required by 41 C.F.R. §60-1.4(b).

4. AGREEMENT OF FILING

Contractor agrees that it will file, per current instructions, complete and accurate reports on Standard Form 100 (EE0-1), or such other forms as may be required under 41 C.F.R. §60-1.7(a).

5. AFFIRMATIVE ACTION FOR HANDICAPPED PERSONS AND DISABLED VETERANS, VETERANS OF THE VIETNAM ERA.

In accordance with 41 C.F.R. §60-250.20, and 41 C.F.R. §60-741.20, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of government contracts and subcontracts.

6. UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS

As prescribed in 48 C.F.R., Ch. 1, 19.708(a):

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and sub-contracts for systems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment amounts due pursuant to the terms of the subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term *small business concern* shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term *small business concern owned and controlled by socially and economically disadvantaged individuals* shall mean a small

business concern which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more such individuals. This term also means small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 C.F.R. part 124.

The Contractor shall presume that socially and economically disadvantaged individual include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term “small business concern owned and controlled by women” shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their sub-contractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantage individuals or a small business concern owned and controlled by women.

- 7. SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUB-CONTRACTING PLAN.** The sub-contractor will adopt a plan similar to the plan required by 48 C.F.R. Ch. 1 at 52.219-9.

Exhibit B

Market Area

The geographic market area, in which ASR is authorized to market, promote the sale of, and be the procuring cause of orders for Services, is defined as follows:

The State of _____

**Exhibit C – Internet Access Services Program
2001 Services and Commissions
Terms and Conditions**

1. The Services subject to this Agreement are the following:

- (a) Digital Subscriber Line (DSL) Service, 128 Kbps Upstream by 384 Kbps Downstream
- (b) Digital Subscriber Line (DSL) Service, 384 Kbps Upstream by 1.5Mbps Downstream.

2. Company shall pay a commission of \$50 on sales of DSL subject to the terms and condition set forth below:

(a) This commission schedule is effective for DSL services installed from the effective date of this Agreement through December 31, 2001.

(b) Commissions for DSL services which do not stay in service for six months from the date of service order completion will be deducted from amounts owed to ASR or ASR will be asked to repay the amount to Company.

(c) Commissions will be paid on or before the last day of the month following the month in which Company bills the customer for the DSL service.

(d) Company shall only pay for DSL New orders (order type N), Change orders (order type C resulting in incremental DSL Service), and From and To orders (order type F&T resulting in the move of a customer's DSL service from one location to another).

(e) DSL commission is paid for the DSL service only. No additional commission will be paid for an existing line to which the service is added. No commission will be paid for any new residential line sold in conjunction with a Consumer DSL sale.

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**Exhibit D
2001 Sales Expectations**

Total minimum volume expectation is _____ sales of DSL lines per year or
_____ sales of DSL lines per month.

Note that in connection with these minimum volume expectation, this Agreement permits Company to terminate this Agreement under certain conditions.

I have read and agree to the above volume expectation for 2001.

Signature

ASR Name

Date

Date

ANT Code